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STATUTES

IN THE

Supreme Court of the United States

October Term, 1947

No. .....

CITY OF CULVER CITY, a Municipal Corporation, CURTIS DAVIS, THOMAS CARROLL, J. R. KLOTS, WILLIAM J. DOUGLAS and ARTHUR H. SEGRELL, as members of the City Council of the City of Culver City; and GEORGE STEVENS, as Superintendent of Public Works of the City of Culver City,

Petitioners and Appellants Below,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent and Appellee Below.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California.

To the Honorable Fred M. Vinson, Chief Justice, and to the Associate Justices of the Supreme Court of the United States:

Petitioner, City of Culver City, a municipal corporation, on its own behalf and on behalf of its officers and employees above-named, respectfully petitions this Honorable Court for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of

California, to review its Judgment in that certain action entitled "The People of the State of California, Plaintiff, vs. City of Los Angeles, *et al.*, Defendants," the Judgment in which matter was rendered by the District Court of Appeal on the 11th day of February, 1948. A Petition for Rehearing, filed with the said District Court of Appeal, was denied March 10, 1948. [R. V. 2, p. 578.] A Petition to the Supreme Court of the State of California for a hearing on the Judgment was denied April 7, 1948 [R. V. 2, p. 750], and the Judgment of the District Court of Appeal became final on the 10th day of April, 1948. [Judgment of District Court of Appeal will be found in Petitioner's Supplement filed herewith at pp. 1 to 28, and in the Record, Vol. 2, pp. 661 to 688, both inclusive.] The Transcript of Record and certain original exhibits are supplied herewith.

For the convenience of this Honorable Court Petitioner has caused to be printed and files herewith a supplement hereinafter sometimes referred to as "Supplement," setting forth salient portions of the Constitution, Statutes and Code Sections of the State of California, portions of the Charter of the City of Culver City and the entire Judgment or decision of the District Court of Appeal, Second Appellate District, State of California, rendered in the above-entitled matter, all of which Petitioner deems necessary for a complete understanding and review of the Judgment of the District Court of Appeal. Said supplement contains the following:

(1) Judgment and Opinion of the District Court of Appeal, Second Appellate District, State of California, reported in 83 A. C. A., p. 794;

(2) Agreement between the City of Los Angeles, and the City of Culver City for the disposal of sewage originating in the City of Culver City;

(3) Charter of City of Culver City (selected portions);

(4) Article XI, Section 6, California Constitution;

(5) California Statutes of 1909, p. 67 (Deering's General Laws, Vol. 2, Act 5192) (selected portions); hereinafter sometimes referred to as the "1909 Act;"

(6) California Statutes of 1939, Chapter 24 (Deering's General Laws, Vol. 2, Act 5192a) (selected portions), hereinafter sometimes referred to as the "Municipal Sewer District Act of 1939;"

(7) California Statutes of 1921, p. 543 (Deering's General Laws, Vol. 1, Act 1801) (selected portions), hereinafter sometimes referred to as "Joint Powers Act;"

(8) California Statutes of 1935, Chap. 649, p. 1797 (selected portions), hereinafter sometimes referred to as the "Public Health Act;"

(9) California Health and Safety Code (selected sections).

Jurisdiction.

Petitioner respectfully invokes the jurisdiction of this Court to review the Judgment or decree in question under Section 344(b) of the Judicial Code, and upon the following grounds:

(a) That its property and property rights have been, or will be taken without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States;

(b) That the State Court's Judgment is based upon non-federal grounds which are untenable in the face of federal grounds urged by Petitioner;

(c) That since the entry of the Judgment of the trial court in the above-entitled matter, and after the appeal was taken therefrom, the legal status of the City of Culver City changed in that the Charter of the City of Culver City, adopted pursuant to an election of the voters of Culver City, was approved by the Legislature of the State of California on the 20th day of January, 1947, and thereafter, on the 21st day of January, 1947, was filed with the Secretary of State of California [Petitioner's Supp. pp. 37 to 39], thereby entitling Petitioner to protection under the "due-process clause" of the Constitution of the United States covering property or property rights acquired or used by Petitioner in connection with "Municipal affairs" under the "home-rule doctrine;"

(d) That the District Court of Appeal has decided a federal question in substance not theretofore determined by this Honorable Court in that said Judgement has the effect of holding that a contract between two municipalities for sewage disposal and rights-of-way used in connection therewith, which has been made and executed pursuant to grant by the Legislature and relating to a local or "municipal affair" of said cities, is not entitled to the protection of the "due-process clause" of the Constitution of the United States;

(e) That the Judgment of the District Court of Appeal involves a matter or question intrinsically important to all municipalities operating under the "home-rule doctrine" wherein the Constitution or basic law of the State under which said municipalities operate recognizes and protects the right of such municipality to own property, to make contracts and to govern itself independently of and without restriction by the Legislature of that State insofar as concerns the municipal or purely local affairs of such municipality.

Summary Statement.

On July 6, 1922, Petitioner and the City of Los Angeles, a charter city, entered into a written agreement [Culver City's Exhibit A, for Identification, Supp. pp. 29 to 36, R. V. 2, pp. 689 to 696], pursuant to the terms and provisions of which, and for a consideration of the sum of Seventy-five Thousand Dollars ($75,000.00) and the granting of certain rights of way by the City of Culver City to the City of Los Angeles, the latter city undertook to construct either a temporary or permanent treatment plant and the necessary appurtenances, and agreed during the life of the latter city's Outfall Sewer System to dispose of all of the sewage originating in the City of Culver City, and undertook *"the obligation of efficiently and properly caring for the sewage of Culver City after it has been discharged into said Outfall Sewer or permanent treatment plant, as the case may be."* (Emphasis added.) Said agreement also provided that as to additional territory acquired by Culver City after the date of the contract, such territory might be connected with the Los Angeles Permanent North Outfall Sewer System *"upon payment to Los Angeles of the sum of $40.00 per acre of all areas so annexed."* At all times thereafter, to the present time, the City of Los Angeles has been disposing of Culver City's sewage through its Outfall Sewer System. Many other municipalities surrounded by or lying adjacent to the City of Los Angeles also have contracts with the City of Los Angeles for the same purpose. The terms of such contracts are not in all respects uniform. The facts leading up to the filing of the Complaint by the State of California in the present action are concisely summarized in the Judgment or Opinion of the District Court of Appeal [Supp. pp. 3 to 7, R. V. 2, pp.

663 through 667], and, without repeating at length, may be further summarized as follows:

Commencing in 1909 when the City of Vernon made its contract for the disposal of its sewage through the facilities of the Los Angeles Outfall Sewer System, and during the years immediately following, various municipalities, including Culver City, and public and private corporations made like agreements. At that time, and for many years thereafter, the capacity of the Outfall Sewer System of the City of Los Angeles was far in excess of the foreseeable needs of Los Angeles. It undertook, in each of said contracts, without exception, to accept and dispose of sewage originating within specified portions of the boundaries of the contracting municipalities, public and private corporations.

On January 6, 1923, that is the next year after the date of the Culver City contract referred to above, a permit was issued to the City of Los Angeles by the State Board of Public Health of the State of California, to dispose of sewage through its Outfall Sewer System into Santa Monica Bay in the Pacific Ocean at Hyperion, conditioned however that Los Angeles construct a treatment plant to be used in connection with such sewage disposal. Pursuant thereto Los Angeles constructed a treatment plant at Hyperion and a submarine tube at that point extending into the Pacific Ocean 5,000 feet.

The evidence in the case is undisputed that the Los Angeles Outfall Sewer System, its treatment plant at Hyperion, and the submarine tube are *owned, maintained and operated in their entirety by the City of Los Angeles* and that none of the contracting municipalities or public or private corporations owns or has any

right, title or interest in or to the sewer system, treatment plant or the submarine tube extending into the Pacific Ocean [Opinion of District Court of Appeal; R. V. 2, pp. 664 and 665].

It is also undisputed that for many years prior to September 30, 1940, the City of Los Angeles had violated the terms of its permit of January 6, 1923, with the result that the discharge of sewage into the Pacific Ocean became a public nuisance [Opinion; R. V. 2, p. 665]. On September 3, 1940, the State Board of Public Health suspended its permit of January 6, 1923, and thereupon issued the City of Los Angeles a temporary permit conditioned that such City proceed at once to prepare plans for the construction of adequate treatment works and outfall structures, and for financing the necessary construction. On May 18, 1942, because of the failure of the City of Los Angeles to comply with the terms of said temporary permit, the State Board of Public Health revoked its temporary permit and thereafter on October 16, 1943, revoked the permits allowing connections with the Los Angeles Outfall Sewer System held by the municipalities, of which Petitioner is one, and by the public and private corporations with whom the City of Los Angeles had contracted for the disposal of their sewage. [See Exhibit 19.] Between May 18, 1942, and the date of the filing of the Complaint by the State of California for a judgment ordering the abatement of said nuisance, to-wit: on December 13, 1943, the City of Los Angeles was engaged in planning and designing various types of treatment plants and works for use in the treatment and disposal of its sewage at Hyperion.

The Opinion of the District Court of Appeal does not recite and no evidence was introduced to the effect that Petitioner or any other Defendant except the City of Los Angeles participated in any wise or had any part in planning or designing such treatment plants or disposal works.

Petitioner has not at any time and does not now contend that the existence of a nuisance at Hyperion and in the waters of Santa Monica Bay was not established by the evidence submitted on the trial of the action.

The trial court found and the District Court of Appeal in its Judgment or decision repeats the finding in substance as follows:

> "The court found that it was to the best interests of all the defendants to dispose of the sewage arising in each particular area of said corporate defendants and each corporation to discharge its sewage through a treatment plant to be built at Hyperion, and after such treatment to discharge the effluent from there into the Pacific Ocean at not less than 5,000 feet from shore. The court then found that the defendants city of Beverly Hills, *city of Culver City,* South Bay Cities Sanitation District, and Sanitation Districts Nos. 4 and 11, among other defendants, *had no other feasible means whatsoever of disposing of sewage originating in the areas of said corporate defendants.*" [Supp. p. 10, R. V. 2, p. 670.] (Emphasis added.)

The Judgment or decision of the District Court of Appeal [Supp. p. 9, R. V. 2, p. 669] recites that the use of the treatment plant and the new submarine tube as planned and recommended by the City of Los Angeles would entirely abate the nuisance created by the discharge of sew-

age at Hyperion. At page 12 of the Supplement, page 672 of the Record, the District Court of Appeal approves the trial court's estimate of $21,000,000 as the cost of constructing the new facilities for the treatment and disposal of sewage at Hyperion. The trial court's Findings, Nos. XXVIII and XXIX, stated the following facts:

"XXVIII.

"It is to the best interest of all of the defendants herein to dispose of the sewage arising in each particular area of said corporate defendants and each corporation to discharge its sewage through a new treatment plant to be built at Hyperion and after such treatment to discharge the effluent therefrom into the Pacific Ocean not less than 5,000 feet from shore.

"XXIX.

"The defendants City of Los Angeles * * * City of Culver City * * * have no other feasible means whatsoever of disposing of sewage originating in the areas of said corporate defendants." [R. V. 1, pp. 164 and 165.]

The Judgment or decision of the District Court of Appeal [Supp. p. 10, R. V. 2, p. 670] repeats the substance of the trial court's Findings Nos. XXVIII and XXIX quoted above; in other words, that the *City of Culver City* has no other feasible means whatsoever of disposing of its sewage except through the Los Angeles Outfall Sewer System, treatment plant and submarine tube. At pages 12 and 13 of Supplement, pages 671 and 672 of the

Record, the opinion of the District Court of Appeal recites that certain of the defendants including the City of Culver City did not have funds available for the payment of their proportionate share of the cost of a new treatment plant and that none of them had taken any steps whatsoever to raise funds either by bonded indebtedness or otherwise for the payment of such proportionate share. The decision of the District Court of Appeal further recites that the trial court found it was feasible to have fully constructed in its entirety and in full operation the said proposed new high-rate activated sludge treatment plant by December 31, 1947. We quote from the Appellate Court's decision, which in turn quotes from the Court's Conclusions of Law, as follows:

> " 'That each corporate defendant which does not adopt some approved method of disposing of sewage originating in the corporate limits of such defendant other than through a new treatment plant or works at or near Hyperion shall be required to advance the proportionate share of such corporate defendant according to the ultimate proportionate use reserved for such defendant towards the construction of a new treatment plant or works at or near Hyperion; *but no corporate defendant shall be prevented from adopting some other method of disposing of sewage originating in the corporate limits of such defendant providing such method is approved by the State Board of Public Health of the State of California, and that such method is a safe and sanitary method of disposal of sewage, and providing that said plan or method is in full operation on or before the 31st day of December, 1947.*' " (Emphasis added by the District Court of Appeal.)

"Judgment was entered accordingly." [Supp. pp. 14 and 15, R. V. 2, p. 674.]

The opinion of the District Court of Appeal [Supp. p. 20, R. V. 2, p. 680] recites in substance that a primary obligation rested upon Appellants to dispose of sewage accumulating within their respective boundaries in such a way that it would entail no injury to other parties, and that Appellants cannot relieve themselves by contract with other municipalities of their primary obligation imposed upon them by law. It further recites that in the case at bar the most that could be said was that by contract with the City of Los Angeles, the latter afforded to Appellants the use of its sewer facilities to carry and dispose of Appellants' sewage at Hyperion, and that the mere fact that Appellants had a contract with the City of Los Angeles for the disposal of such sewage did not in the least enter into the merits of the action as between the People of the State of California and Appellants for abatement of a nuisance arising from pollution of salt waters within the jurisdiction of the State of California. At page 21 of Supplement, page 681, R. V. 2, the decision further recites:

> "There rested upon appellants a bounden duty to dispose of their sewage in such a manner as not to bring injury or damage to others. It therefore follows, that the fact that the screening plant and submarine tube at Hyperion are owned, maintained and controlled by the city of Los Angeles does not relieve appellants of responsibility for the admitted public nuisance sought to be abated, if they contributed thereto."

The City of Los Angeles did not appeal from the trial court's Judgment.

Issues Presented to the District Court of Appeal and to the California State Supreme Court.

Petitioner, as one of the Appellants, in its Brief on appeal from the decision of the trial court submitted and argued the following propositions:

(1) That Appellants are not legally responsible for the maintenance of a nuisance nor can they be held liable for the cost of abating the same, where the instrumentality causing the nuisance is neither owned by nor under the jurisdiction or control of Appellants.

(2) That the contracts between the City of Los Angeles as one party and the other defendants and appellants respectively as the other party are lawful contracts and were executed pursuant to authority vested in all of said contracting parties including the City of Los Angeles by the Statutes of the State of California, citing portions of the Act of 1909, the Joint Powers Act and the Municipal Sewer District Act of 1939.

(3) That the Los Angeles Outfall Sewer System and treatment plant as operated by the City of Los Angeles is a public utility.

(4) That the court in a proceeding for the abatement of a nuisance has no power to dictate or prescribe the means or facilities which shall be used or constructed to abate the nuisance and has no power or jurisdiction to order the construction of additional facilities which it deems necessary to prevent the recurrence of the nuisance by reason of causes not then in existence but anticipated to occur in the future.

(5) That the Judgment violates the provisions of Article I, Section 13 of the Constitution of California, and the Fifth and Fourteenth Amendments of the Constitution of the United States in that its effect is to deprive Appellants of their property without due process of law.

The same propositions will be found to have been urged in the Petition of the City of Culver City for a rehearing before the District Court of Appeal [R. V. 2, pp. 557 to 577], and again in the Petition filed by City of Culver City for a hearing by the Supreme Court of the State of California [R. V. 2, pp. 607 to 696].

In answer to Appelant's contention that the trial court was without power to dictate or prescribe the means or facilities to be used or constructed to abate a nuisance or to order the construction of the means or facilities which it deems necessary to prevent a continuance or recurrence of the nuisance by reason of causes not then in existence but anticipated to occur in the future, the decision of the District Court of Appeal holds as follows:

> "We are in accord with the claim of appellants that the court does not possess the power to indicate or prescribe the means or facilities that shall be constructed or used to abate the nuisance. However, an examination of the record herein reveals that the court did not decree or prescribe the means or facilities to be used, nor require that any particular plant be built. Conclusion of Law XI hereinbefore set forth, provides that only those appellants who do not adopt *some* approved method of disposing of their sewage, other than through a new treatment plant or

works at or near Hyperion, 'shall be required to advance the proportionate share of such corporate defendant according to the ultimate proportionate use reserved for such defendant towards the construction of a new treatment plant or works at or near Hyperion; *but no corporate defendant shall be prevented from adopting some other method of disposing of sewage* originating in the corporate limits of such defendant, providing such method is approved by the State Board of Public Health of the State of California, and that such method is a safe and sanitary method of disposal of sewage, and providing that said plan or method is in full operation on or before the 31st day of December, 1947.' (Emphasis added.)

The judgment also gives to each appellant the opportunity to determine whether to withdraw from the Los Angeles city system and set up any method of treatment of their sewage which would take it from the Los Angeles system and thereby remove it as a contributing cause to the admittedly existing nuisance." [Supp. pp. 22 and 23, R. V. 2, pp. 682 and 683.]

And again at pages 24 and 25 of Supplement, page 684, R. V. 2, the decision of the District Court of Appeal holds as follows:

"The city of Los Angeles is bound to construct the system which is proposed, which the court approved, and which the judgment has made binding upon that city. To that extent, at least, the final judgment against the city of Los Angeles is final also as to the appellants.

Appellants are permitted to adopt some other method of disposing of their sewage, subject only to the statutory requirement that such method be ap-

proved by the State Board of Public Health. They are required to pay a proportionate share toward the Los Angeles system only in the event that they desire to take part in the use of such system."

Answering the contention of the City of Culver City that the trial court's Judgment as rendered violates Article I, Section 13, of the Constitution of California, and the Fifth and Fourteenth Amendments of the Constitution of the United States, in that its effect is to deprive Appellants of their property without due process of law, the District Court of Appeal said:

"Appellants' contention that the judgment rendered herein violates the provisions of article I, section 13, of the Constitution of California, and the Fifth and Fourteenth Amendments to the Constitution of the United States, in that its effect is to deprive appellants of their property without due process of law, cannot be sustained. Appellants predicate this argument on the premise that the court was without jurisdiction or right to disregard their several contracts with the city of Los Angeles; that in so doing and requiring appellants to contribute funds toward the construction of the new treatment plant and submarine tube in excess of the amounts which they are severally obligated to pay to the city of Los Angeles under their respective contracts, appellants' property will, to the extent of such excess payments, be taken without due process of law.

The judgment required that each appellant should pay a proportionate share of the cost of the new system according to the capacity allotted to each appellant, but only in the event such appellant desired voluntarily to sewer through Hyperion." [Supp. p. 27, R. V. 2, pp. 686 and 687.]

and again on the same page the District Court of Appeal's decision reads:

> "This is a proceeding initiated by the people of the State of California on behalf of the state itself, and on behalf of the State Department of Public Health, as well as other state agencies, against all named defendants, to abate a public nuisance. Therefore, the court rightfully refrained from passing upon any of the rights, obligations or liabilities affecting the various defendants by reason of their contractual relations with each other, and left those matters open for future adjudication in a proper proceeding. Although the aforesaid contracts concerned the disposal of sewage, the court would not be justified in this action to adjudicate the rights existing between the various appellants by reason of their contracts one with the other. Insofar as the judgment herein is concerned, if any of the appellants have any rights against the city of Los Angeles, or *vice versa*, by reason of any existing contract, such rights have been preserved and may be enforced in a proper action. All of appellants' property and rights were preserved to them and the judgment in the instant action does not impair or violate any of their constitution rights." [Supp. pp. 27 and 28, R. V. 2, pp. 687 and 688.]

The offer by Petitioner and the other Appellants to introduce their respective contracts with the City of Los Angeles into evidence was denied by the trial court upon the ground that said contracts were immaterial and did not constitute a ground of defense to the action [R. V. 1, pp. 269 and 270]. The decision of the District Court of Appeal upheld the trial court [Supp. p. 21, R. V. 2, p. 681].

In its Petition for Hearing on the Judgment and decision of the District Court of Appeal filed with the Supreme Court of the State of California by the City of Culver City, Petitioner discussed at considerable length the effect upon Petitioner of the trial court's judgment as approved and affirmed by the decision of the District Court of Appeal, and in particular the effect of said judgment upon Petitioner's contract with the City of Los Angeles for the disposal of the sewage. In said Petition [R. V. 2, p. 611] it pointed out to the Supreme Court that compliance with the Judgment, if the City of Culver City continues to sewer through the Los Angeles Outfall Sewer System (as the trial court's Findings and the Appellate Court's decision decided to be the only means feasible for the disposal of the sewage by Culver City) would cost the City of Culver City the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) based upon an estimated cost for the entire project of the sum of $21,000,000.00. It further pointed out to the Supreme Court [R. V. 2, p. 650] that increased costs of various items going to make up the entire project indicate that the treatment plant, when completed, instead of costing $21,000,000.00, as estimated in 1945, would, in all likelihood, cost something in excess of $40,000,000.00, thereby increasing the prospective cost to Petitioner from something in excess of $250,000.00 to nearly twice that amount; whereas [R. V. 2, p. 610] City of Culver City now has a contract with the City of Los Angeles for the disposal of its sewage, the total consideration for which has already been paid.

Petitioner's contention that the Judgment of the trial court and the decision of the District Court of Appeal have the effect of depriving Petitioner of its property

without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, as well as in violation of Article I, Section 13 of the Constitution of California, was argued at considerable length by City of Culver City in said Petition for Hearing filed with the Supreme Court of the State of California.

In said Petition for Hearing the City of Culver City also pointed out to the Supreme Court of the State of California in great detail wherein the decision of the District Court of Appeal rested its Judgment upon non-federal grounds untenable in the face of the federal grounds urged by City of Culver City in that the Judgment requires the City of Culver City to abandon its investment, property and property rights made and acquired under its contract with the City of Los Angeles and adopt other means for the disposal of its sewage (which, under the Findings of Fact, and also under the decision of the District Court of Appeal was impossible), or to abandon its rights under said contract insofar as concerns additional payments to the City of Los Angeles for the disposal and treatment of its sewage, and to pay the City of Los Angeles a sum of money estimated to be in excess of $500,000.00 for the same service which the City of Los Angeles had agreed to perform in its contract with the City of Culver City. [Petition for Hearing before the Supreme Court by City of Culver City, R. V. 2, pp. 643 to 653, and 657 to 660.]

Questions Involved.

(1) Where the State Court's Judgment, in ordering the abatement of a nuisance, requires a defendant to adopt one of two alternate means for such abatement, the first of which is admittedly beyond the power of such court to order, and compliance with the second of which is admittedly impossible, are such non-federal grounds sufficiently tenable to sustain the Judgment over the federal grounds urged by such defendant?

(2) Does the adoption of a Charter by a defendant municipality after entry of the trial court's judgment against it, constitute a change in the legal status of such defendant sufficient to entitle the municipality to invoke the jurisdiction of the Supreme Court of the United States by certiorari?

(3) Does the Judgment of the State Court infringe upon the Fourteenth Amendment of the Constitution of the United States where the effect of such Judgment is to require a municipality to surrender its rights under a contract, for the disposal of its sewage, executed pursuant to grant of power by the State Legislature?

Reasons for Granting the Writ.

The discretionary power of this Court is invoked upon the following grounds:

(1) Because of the importance to the public of an authoritative determination by this Court of the questions involved.

(2) Because the Judgment and opinion of the District Court of Appeal of the State of California is based upon non-federal grounds which are untenable in the face of the federal grounds (*i. e.*, the Due Process Clause) urged by Petitioner for the following reasons:

(a) The City of Culver City is given no alternative by the Judgment other than the abandonment of its property rights under its contract with the City of Los Angeles for the disposal of its sewage;

(b) The City of Culver City is required to expend in excess of $500,000.00 as its share of the cost of sewage disposal works, ordered to be constructed by the Judgment, over its objection that the City of Los Angeles and not the City of Culver City is required by contract to provide said facilities without cost to the City of Culver City; and

(c) The portion of the trial court's judgment ordering the construction of prescribed means and facilities for the abatement of the nuisance is conceded by the Judgment of the Dis-

trict Court of Appeal to be void as to Petitioner because it is beyond the power possessed by the trial court.

(3) That since the entry of the Judgment of the trial court in the above-entitled matter, and after the appeal therefrom was taken, the legal status of the City of Culver City changed, in that said City adopted, and the Legislature of the State of California approved the Charter of the City of Culver City, whereupon the City of Culver City became entitled to protection under the "Due Process" Clause of the Constitution of the United States, covering property and property rights acquired or used by Petitioner in connection with its "Municipal Affairs" under the "Home-Rule Doctrine" recognized and protected under Article XI, Section 6 of the Constitution of the State of California, and under the basic law applicable to all municipalities wheresoever situated in states of the United States recognizing the "Home-Rule Doctrine."

(4) That property and property rights of a municipality acquired by contract with another municipality while acting in either its governmental or proprietary capacity in a matter which is strictly a "Municipal Affair" of such municipality under the provisions of the state Constitution are entitled to protection under the "Due Process" clause of the Constitution of the United States.

Wherefore, your Petitioner respectfully prays that this Petition be granted and that a Writ of Certiorari be issued, directed to the District Court of Appeal of the State of California, Second Appellate District.

M. TELLEFSON,
City Attorney of the City of Culver City,

E. L. SEARLE,
Special Counsel,

[redacted], STUART M. SALISBURY
Attorneys for Petitioners.

IN THE

Supreme Court of the United States

October Term, 1947.

No. .....

CITY OF CULVER CITY, a Municipal Corporation, CURTIS DAVIS, THOMAS CARROLL, J. R. KLOTS, WILLIAM J. DOUGLAS and ARTHUR H. SEGRELL, as members of the City Council of the City of Culver City; and GEORGE STEVENS, as Superintendent of Public Works of the City of Culver City,

Petitioners and Appellants Below,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION.

1. Opinion of the State Court:

The opinion and Judgment of the District Court of Appeal of the State of California, is reported in 83 A. C. A., p. 794, and will be found in Petitioner's Supplement, pp. 1 to 28, and in the Record, Vol. 2, pp. 661 to 688, both inclusive.

2. Jurisdiction.

The jurisdiction of this Court is invoked under Section 344(b) of the Judicial Code, and upon the grounds as stated under the same heading in the foregoing Petition.

3. The Judgment of the District Court of Appeal, Second Appellate District of the State of California.

The Judgment appears in the Record, Vol. 2, pp. 661 to 688, both inclusive, and in Petitioner's Supplement, pp. 1 to 28. As stated in the foregoing Petition the Judgment was entered on the 11th day of February, 1948. A Petition for Rehearing was denied by the District Court of Appeal March 10, 1948 [R. V. 2, p. 578]. A Petition to the Supreme Court of the State of California for a hearing on the Judgment was denied April 7, 1948 [R. V. 2, p. 750] and the Judgment of the District Court of Appeal became final on April 10, 1948.

Under the heading of SUMMARY STATEMENT in the Petition the contents of the Judgment were discussed at length and will not be repeated at this point.

Under the heading in the Petition entitled ISSUES PRESENTED TO THE DISTRICT COURT OF APPEAL AND TO THE CALIFORNIA STATE SUPREME COURT Petitioner has previously discussed in as concise a manner as possible the issues presented and the holding of the District Court of Appeal in answer thereto. It will be noted therefrom that the issues now being presented to this Honorable Court were raised by Petitioner in its Brief and Petitions filed in connection with the appeal to the District Court of Appeal, the Petition for Rehearing before that Court, and, likewise, in the Petition for Hearing filed with the Supreme Court of the State of California. Those issues will not be repeated in Petitioner's Brief except in so far as necessary to emphasize the points now being made invoking the jurisdiction of this Honorable Court.

4. Statement of the Case.

Boiled down to its basic essentials, the question presented to this Honorable Court by Petitioner is whether a California municipality operating under a freeholder's charter, adopted pursuant to provisions of the Constitution of that State, is simply an agency of the State or the Legislature, and as such comes within the rule or definition as announced in *Trenton v. New Jersey*, 262 U. S. 182, 67 L. Ed. 937, 29 A. L. R. 1471; or whether such a charter city is entitled to protection of the "due process clause" of the Federal Constitution, in respect to its contracts and property made and acquired under its charter powers and the Constitution of the State of California [Article XI, Section 6; Supp. p. 40], providing that such cities adopting charters under this Constitution are "empowered hereunder *to make and enforce all laws and regulations in respect to municipal affairs subject only to the restrictions and limitations provided in their several charters* and in respect to other matters they shall be subject to and controlled by general laws." (Emphasis added.)

Petitioner respectfully submits that the decision of this question is of far-reaching importance to all cities operating under charters wherein by State Constitutional provisions their powers to govern themselves, to make contracts and to acquire and hold property in all matters pertaining to their respective purely local and "municipal affairs" are paramount to general laws and authority of the State Legislature in every respect, subject only to control by the State Legislature under its police power; and that the question is of like importance to all cities operating under the "home-rule doctrine" in those States

which recognize the basic or substantive law to be that the power of such cities to govern themselves and to acquire their own property as to purely local matters and affairs is paramount to the power vested in the State Legislature.

Any other points raised by this Petitioner depend upon this Honorable Court's answer to the foregoing question, and fall of their own weight if that question is answered adversely to the contentions made by Petitioner.

So that there may be no confusion of the issues tendered by this Petition, it will immediately be admitted that the question of the abatement of the nuisance and of the construction of State Statutes, hereinafter referred to, by the Appellate Courts of the State of California, are State matters, decisions on which are binding upon this Honorable Court except in so far as they violate the provisions of the Federal Constitution. It is, likewise, agreed that nothing contained in Petitioner's Charter renders the City of Culver City immune from supervision and regulation in all reasonable respects by the Legislature of the State of California acting under its police power, even though such action may collide with or run contrary to action previously taken by the municipality as to a purely local or "municipal affair" covered by its Charter.

The issues may be further defined by stating that Petitioner does not contend that any law has been passed by the Legislature of the State of California impairing its contracts or taking its property without due process of law, as defined by the Federal Constitution. On the contrary, Petitioner contends that the Judgment of the District Court of Appeal by its terms, and based as it is upon untenable non-federal grounds, does have the effect

of taking property and property rights of Petitioner acquired and owned by the City of Culver City in its governmental or proprietary capacity in a matter which the Appellate Courts of California, without exception, have held to be a "municipal affair," and that such taking is in violation of the due-process clause of the Federal Constitution.

5. The Judgment of the District Court of Appeal Is Based Upon Non-Federal Grounds Which Are Untenable in the Face of Federal Grounds Urged by Petitioner.

The decision of the District Court of Appeal is based upon untenable non-federal grounds in that its Judgment ordering the abatement of a nuisance requires this Petitioner to adopt one of two alternate means for such abatement. The first method requires that Petitioner contribute its share of the cost of constructing means and facilities dictated by the court when the court in the same decision holds with Petitioner's contention *"that the court does not possess the power to indicate or prescribe the means or facilities that shall be constructed or used to abate the nuisance."* (Emphasis added.) [Supplement pp. 22 and 23.] And the second alternate means which the decision of the District Court of Appeal requires Petitioner to adopt is patently impossible of compliance by the City of Culver City. The decision of the District Court of Appeal on this point reads in part as follows:

> "The court found that it was to the best interests of all the defendants to dispose of the sewage arising in each particular area of said corporate defendants and each corporation to discharge its sewage through a treatment plant to be built at Hyperion, and after

such treatment to discharge the effluent from there into the Pacific Ocean at not less than 5,000 feet from shore. The court then found that the defendane * * * City of Culver City * * * among other defendants, *had no other feasible means whatsoever of disposing of sewage originating in the areas of said corporate defendants.*" [Supplement p. 10.] (Emphasis added.)

The decision of the District Court of Appeal on this point continues.

> "The judgment also gives to each apellant the opportunity to determine whether to withdraw from the Los Angeles city system and set up any method of treatment of their sewage which would take it from the Los Angeles system and thereby remove it as a contributing cause to the admittedly existing nuisance." [Supplement p. 23.]

If the only feasible means for the disposal of its sewage by the City of Culver City was and is through the Los Angeles Outfall Sewer System there can be no alternate available to the City of Culver City, and it is, therefore, absolutely required to continue to dispose of that sewage, as it has since 1923, through the facilities of the Los Angeles Outfall Sewer System. For the District Court of Appeal to say that Petitioner can elect whether to continue to use the facilities of the Los Angeles Outfall Sewer System or not is to state in effect that because the City of Culver City has no other feasible method or means of disposing of its sewage it has elected and must of necessity elect to continue to sewer through the Los Angeles sewage facilities. We respectfully submit that such a statement of facts cannot be used as grounds for

stating that the City of Culver City has elected to continue to use the Los Angeles Sewer System, and, therefore, cannot complain that the Judgment of the District Court of Appeal in ordering the construction of prescribed means and facilities and ordering the payment of a particular portion of the cost thereof by Petitioner is void and beyond the power of said court as to the City of Culver City, or that the grounds stated by the Judgment of the District Court of Appeal constitute tenable non-federal grounds sufficient to sustain the Judgment over the Federal grounds urged by Petitioner that said Judgment has the effect of taking Petitioner's property and property rights without due process of law.

Petitioner's right to have the Judgment of the District Court of Appeal reviewed cannot be defeated where that court's decision is based upon non-federal grounds which are untenable in the face of Federal grounds urged by Petitioner.

> *State of Indiana ex rel. Dorothy Anderson, Petitioner, v. Harry Brand,* 303 U. S. 95, 82 L. Ed. 685,

where the court said (82 L. Ed. 690):

> "And since the amendment of the judiciary act of (September 24) 1789 by the act of February 5, 1867, it has always been held this Court may examine the opinion of the state court to ascertain whether a federal question was raised and decided and whether the Court rested its judgment on an adequate non-federal ground."

Ward v. County Commissioners, 253 U. S. 17, 64 L. Ed. 751;

Broadwell v. Carter County, 253 U. S. 25, 64 L. Ed. 759.

A state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity which, if recognized and enforced, would require a different judgment, is specially set up or claimed.

Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 50 L. Ed. 596;

West Chicago Street R. Co. v. Illinois, 201 U. S. 506, 50 L. Ed. 845;

Sage v. Hampe, 235 U. S. 99, 59 L. Ed. 147;

Joy v. St. Louis, 201 U. S. 332, 50 L. Ed. 776;

Talbot v. First Natl. Bank, 185 U. S. 172, 46 L. Ed. 857;

Missouri, K. & T. R. Co. v. Elliott, 184 U. S. 530, 46 L. Ed. 673;

McCullough v. Virginia, 172 U. S. 102, 43 L. Ed. 382;

Murray v. Charleston, 96 U. S. 432, 24 L. Ed. 760;

Curran v. Arkansas, 15 How. 304, 14 L. Ed. 705.

Petitioner urged as Federal grounds, opposed to the untenable grounds stated in the Judgment of the District Court of Appeal recited above, that in requiring the City of Culver City to contribute in excess of $500,000.00 to-

ward the cost of the sewage facilities ordered to be constructed for the abatement of the nuisance, that Petitioner's property and property rights are being taken without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States. In support of this argument Petitioner pointed out and now urges that its contract with the City of Los Angeles provides in substance that the City of Los Angeles shall accept and dispose of all sewage originating within the territorial limits of the City of Culver City, as it existed in 1923, during the life of the Los Angeles Outfall Sewer and that the City of Los Angeles by said contract had agreed to provide and maintain all of the facilities, including the treatment plant, as might be necessary to dispose of said sewage "efficiently and properly" without further cost to the City of Culver City [Supplement pp. 29 to 36].

Petitioner further pointed out to the District Court of Appeal and now urges that in refusing to recognize the terms and provisions of said contract between the City of Culver City and the City of Los Angeles, and in ordering Petitioner to pay $500,000.00 for the same facilities which said contract required the City of Los Angeles to provide, that the City of Culver City was not only being deprived of its property and property rights, but it was being required to abandon all rights as set forth in said contract, and that said Judgment therefore is in violation of the due-process clause of the Federal Constitution.

6. The Legal Status of the City of Culver City Changed Since the Entry of the Judgment of the Trial Court in the Above-Entitled Matter and After the Appeal Was Taken Therefrom.

The Judgment of the trial court was entered February 1, 1946, in Book 1619 at page 266 of Judgments [R. V. 1, p. 190]. The Notice of Appeal from the trial court's judgment was filed by the City of Culver City, April 15, 1946 [R. V. 1, p. 192]. The Charter of the City of Culver City was approved by the Legislature of the State of California on the 20th day of January, 1947, and was filed with the Secretary of State, January 21, 1947. [Supplement p. 37.]

Petitioner respectfully submits that the change in its legal status in the adoption of its Charter is of primary importance to Petitioner in this litigation in that the adoption of said Charter automatically invested the City of Culver City with powers to "make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in its Charter." [California Constitution, Art. XI, Sec. 6; Supplement p. 40.]

The Charter of the City of Culver City reads in part as follows:

> "Section 304. Continuance of Contracts and Public Improvements. All contracts entered into by the City or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect." [Supplement p. 38.]

* * * * * * * *

"Article IV. Powers of City.

"Section 400. Powers of City. The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution of the State of California.

"The enumeration in this Charter of any particular power shall not be held to be exclusive of, or any limitation upon, this general grant of power." [Supplement p. 39.]

The following authorities are cited in support of Petitioner's contention that this Honorable Court will take jurisdiction where a law applicable to the litigation or the legal status of Petitioner has changed since the entry of the judgment.

Ashcraft v. Tennessee, 322 U. S. 143, 88 L. Ed. 1192.

At page 1200 of the decision as reported in Vol. 88, L. Ed., the court said:

"In disposing of cases before us it is our responsibility to make such disposition as justice may require. 'And in determining what justice does require, the Court is bound to consider any change either in fact or in law which has supervened since the judgment was entered.'"

Carpenter v. Wabash Railway Company, 309 U. S. 23, 84 L. Ed. 558,

where the court, at page 561 of 84 L. Ed., said:

"But if, subsequent to the judgment, and before the decision of the Appellate Court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied * * *. In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

State Tax Commissioner v. Van Cott, 306 U. S. 511, 83 L. Ed. 950.

At page 953 of 83 L. Ed. the court said:

"and in determining what justice does require, the court is bound to consider any change, either in fact or in law which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the cause so that the state court may be free to act."

Patterson v. Alabama, 294 U. S. 600, 79 L. Ed. 1082;

Missouri ex rel. Wabash R. Co. v. Public Service Commission of Missouri, 273 U. S. 126, 71 L. Ed. 575;

Villa v. Van Schaick, 299 U. S. 152, 81 L. Ed. 91.

7. The Property and Property Rights of a Charter City in California Acquired in the Conduct of Its Municipal Affairs Are Entitled to Protection Under the "Due Process Clause" of the Federal Constitution.

The property and property rights of a municipal corporation operating under a Charter adopted pursuant to the provisions of Article XI, Section 8 of the Constitution of the State of California and which said property and property rights were acquired by such municipality while acting in either its governmental or proprietary capacity in a matter or function which is strictly a "municipal affair" as defined by Article XI, Section 6 of the California Constitution are entitled to protection under the "due process clause" of the Constitution of the United States.

The construction of a sewer, making contracts, or acquiring property therefor, and the operation of such sewer for the disposal of water-borne sewage are "municipal affairs."

Loop Lumber Co. v. Van Loben Sels, 173 Cal. 228, 159 Pac. 600.

At page 232, 173 Cal. Rep., the court said:

> "In so far as such a charter makes provision relative to any 'municipal affair' it is the supreme law, paramount to any law enacted by the state legislature, and general laws enacted by the legislature in regard thereto can have no application. It is unnecessary to cite authorities to sustain this proposition, which has been so often declared as to have become practically elementary. That street and sewer work in a municipality, and the making of contracts therefor on the

part of the municipality are 'municipal affairs' within the meaning of the constitutional provision cannot be doubted. (See *Byrne v. Drain,* 127 Cal. 663, 667 (60 Pac. 433); *Barber Asphalt Co. v. Costa,* 171 Cal. 138 (152 Pac. 296).) Especially is this true where the expense of the work is to be borne by the municipality itself, as was the fact in this case."

Sunter v. Fraser, 194 Cal. 337, 228 Pac. 660,

where the court said (194 Cal. at p. 343):

"By this amendment to its charter the city brought itself within the conditions of the amendments of 1914 to sections 6 and 8 of article XI of the constitution. Thereupon, according to the terms of those sections, its powers over municipal affairs became all-embracing, restricted and limited by the charter only. The result is that the city has become independent of control by general laws upon municipal affairs. (*Civic Center Assn. v. Railroad Com.,* 175 Cal. 441, 448 (166 Pac. 351).)"

Byrne v. Drain, 127 Cal. 663, 60 Pac. 433;

Barber Asphalt Co. v. Costa, 171 Cal. 138, 152 Pac. 296.

In re Means, 31 Cal. App. (2d) 290, 93 P. (2d) 105,

where at page 294 of 31 Cal. App. (2d) the court said:

"That the supplying of water, and the removal of water borne waste is a municipal affair is clearly established in *Metropolitan Water Dist. v. Superior Court,* 2 Cal. (2d) 4 (37 Pac. (2d) 1041); *Smith v. City of Glendale,* 1 Cal. App. (2d) 463 (36 Pac. (2d) 1083); *City of Pasadena v. Charleville,* 215 Cal. 384

(10 Pac. (2d) 745); *Wehrle v. Board of Water & Power Commrs.*, 211 Cal. 70 (293 Pac. 67)."

Butterworth v. Boyd, 12 Cal. (2d) 140, 82 P. (2d) 434,

where the court, at page 146 of 12 Cal. (2d), said:

"Under the provisions of article XI, section 8, of the California Constitution, a city or city and county having a freeholders' charter adopted pursuant to said section has the power of 'municipal *home rule.*'" (Emphasis added.)

and again at pages 147 and 148:

"The purpose of the constitutional provisions was to make municipalities self-governing and free from legislative interference with respect to matters of local or internal concern. 'It was to enable municipalities to conduct their own business and control their own affairs, to the fullest possible extent in their own way. It was enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.' (*Fragley v. Phelan*, 126 Cal. 383, 387 (58 Pac. 923).) No exact definition of the term 'municipal affairs' can be formulated, and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case. The comprehensive nature of the power is, however, conceded in all the decisions, and it is recognized that it is not fixed but fluctuates in scope, and that changes in conditions make necessary new and broader applications thereof."

* * * * * * * *

"In applying these principles, the following activities, similar to that under consideration here, have been held to be municipal affairs and hence within the city's legislative power: * * * Supervision of sanitary conditions in a city, and provision for the health of its inhabitants, by establishment of a local board of health."

For a complete discussion of the fundamentals of the "home-rule doctrine," as applied to municipalities, see

People v. Common Council of Detroit (opinion by Justice Cooley), 28 Mich. 228.

See also:

State ex rel. Missoula v. Holmes, 100 Mont. 256, 47 P. (2d) 624, 100 A. L. R. 581.

The *home-rule doctrine* has been recognized as a part of the basic law of the State of California since 1861.

Grogan v. San Francisco, 18 Cal. 590.

The decision in this case was written on behalf of the California Supreme Court by the illustrious Stephen J. Field, who at that time was Chief Justice of the court. The action involved the validity of a grant of certain lands by the Legislature of the State of California to the City of San Francisco, which was then operating under a Charter granted it in 1851. Subsequent to the original grant the State Legislature attempted to change and modify the terms of the grant and in particular attempted to circumscribe the terms of sale in a manner not contem-

plated by the original grant. We believe the position of the Supreme Court of the State of California on this question and the application of the principles therein stated to the rights of a municipality in connection with its "municipal affairs" cannot be more forcefully stated than by quoting from the phraseology used by Chief Justice Field. At pages 613 and 614 he said:

> "Nor is there any difference in the inviolability of the contract between a grant of property to an individual and a like grant to a municipal corporation. So far as municipal corporations are invested with subordinate legislative powers for local purposes, they are mere instrumentalities of the State for the convenient administration of the Government, and their powers are under the entire control of the Legislature; they may be qualified, enlarged, restricted, or withdrawn at its discretion. But these bodies, says Kent, 'may also be empowered to take and hold private property for municipal uses, and such property is invested with the security of other private rights.' (1 Com. 3 Vol. 275.) 'It may also be admitted,' observes Mr. Justice Story, in his opinion in the case of *The Trustees of Dartmouth College v. Woodward*, 'that corporations for mere public government, such as towns, cities, and counties, may in many respects be subject to legislative control. But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendant that it may, at its will, take away the private property of the corporation or change the uses of its private funds

acquired under the public faith.' (4 Wheat. 694.) 'The inhabitants of the city of New York,' says the Supreme Court of New York, 'have a vested right in the city hall, markets, water-works, ferries, and other public property, which cannot be taken from them any more than their individual dwellings or storehouses. Their rights, in this respect, rest not merely upon the Constitution, but upon the great principles of eternal justice, which lie at the foundation of all free governments.' (*Benson v. The Mayor of New York,* 10 Barb. 245.) The authorities are all to the same purport. A legislative grant is an executed contract, and as such is within the clause of the Constitution of the United States which prohibits the States from passing any law impairing the obligation of contracts. This was expressly decided by the Supreme Court of the United States in *Fletcher v. Peck,* 6 Cranch. 137. It cannot therefore be destroyed, and the estate be divested by any subsequent legislative enactment. And though a municipal corporation is the creature of the Legislature, yet when the State enters into a contract with it, the subordinate relation ceases, and that equality arises which exists between all contracting parties. And however great the control of the Legislature over the corporation, it can be exercised only in subordination to the principle which secures the inviolability of contracts."

City of Monterey v. Jacks, 139 Cal. 542, 73 Pac. 436.

At pages 551 and 552 of Vol. 139, Cal. Rep., the principle expressed by the court in *Grogan v. San Francisco* is reaffirmed.

8. Granting of a Right or Power to a Municipality in a Matter Coming Strictly Within the Definition of "Municipal Affairs" as Applied to a California City May Not Subsequently Be Revoked by the Legislature After the Grant Has Been Accepted and Acted Upon by the Municipality.

The contracts between the City of Culver City and the City of Los Angeles for the disposal of the former city's sewage were entered into pursuant to grant of power and authority vested in the City of Culver City by the Legislature of the State of California. The contracts were executed pursuant to the provisions of the Act of 1909 [Supplement pp. 41 to 44]. That Act provides for the making of contracts between municipalities under three (3) distinct sets of circumstances: First, where two cities desire to jointly construct and operate a sewer system; second, where two cities desire to jointly construct a sewer system and thereafter operate the same through the facilities of one of the contracting municipalities; and, third, where a sewer system has already been constructed and is owned and operated by one municipality and another municipality, without such facilities, desires to contract for the disposal of its sewage through the facilities of the other municipality's sewer system. It was under this latter set of circumstances that the City of Culver City made its contract with the City of Los Angeles. By reason of the fact that in 1922 when the Culver City contract was executed, the City of Culver City was a city of the sixth class and not operating under a Charter, it is questionable that such a contract could have been made without the authority granted by the 1909 Act. It is noteworthy that the word "grant" is used in Section 2 of the Act in connection with the right or privilege passing by contract

from one municipality to the other. Again, in Section 4 of the Act [Supplement p. 43], we note the following phraseology:

> "And the City Council * * * of each such municipal corporation * * * are hereby *vested with power to bind and obligate such municipal corporations* * * *." (Emphasis added.)

Again, in the same section [Supplement p. 44], the Act reads in part as follows:

> *"Authority is hereby specifically granted to use the streets within the public corporations entering into such agreement."*

At this point it might be well to note that the Municipal Sewer District Act of 1939 [Supplement pp. 45 and 46] and Section 4 thereof, recites:

> "All contracts made prior to the adoption and passage of this act between any two or more municipal corporations * * * providing for the joint construction, use or operation of sewer systems or sewage disposal systems, are hereby ratified and confirmed * * *."

It is the contention of Petitioner, under the rule stated by Chief Justice Fields in the *Grogan* case, *supra,* that when the City of Culver City accepted and acted upon the grant contained in the Act of 1909, that is, when it made the contract with the City of Los Angeles for the disposal of its sewage and expended its taxpayers' money for the acquisition of property and property rights authorized to be acquired under the provisions of said Act of 1909, the Legislature of the State of California could not thereafter

revoke or infringe upon its rights acquired under said grant without violating the "due process clause" of the Federal Constitution.

A situation somewhat parallel to the use of streets for sewage purposes, as previously discussed herein, is the right by one municipality to occupy and use streets of another municipality for water supply pursuant to grant of authority by the California Legislature. Such a situation was passed upon in

City of Beverly Hills v. Los Angeles, 175 Cal. 311, 165 Pac. 924.

In passing upon the nature of the rights of the City of Los Angeles acquired by the acceptance of the grant by the Legislature, the Supreme Court of the State of California said, at page 314 of 175 Cal. Rep.:

> "That the offered grant so made by the state was accepted by said defendant prior to the incorporation of the city of Beverly Hills, in our opinion admits of no doubt. (*City R. Co. v. Citizens' St. R. R. Co.,* 166 U. S. 557 (41 L. Ed. 1114, 17 Sup. Ct. Rep. 653); *Russell v. Sebastian,* 233 U. S. 195 (Ann. Cas. 1914C, 1282, 58 L. Ed. 912, 34 Sup. Ct. Rep. 517); *Grand Trunk Western R. Co. v. South Bend, 227* U. S. 544 (44 L. R. A. (N. S.) 405, 57 L. Ed. 633, 33 Sup. Ct. Rep. 303).)
>
> "The grant resulting from defendant's acceptance of the state's offer constituted a contract, the property right in which is protected by the federal Constitution (*Russell v. Sebastian, supra,* and the cases therein cited), and the extent of which right is measured by the purpose for which the grant was made and accepted."

The doctrine announced in the *Beverly Hills* case, *supra*, is treated with approval at some length in

Russell v. Sebastian, 233 U. S. 195, 58 L. Ed. 912.

This action involved a grant by the Legislature of the State of California to private corporations authorizing the use of streets in municipalities under certain conditions. The United States Supreme Court held that the City of Los Angeles had no right to impair the use of the grant by a gas company which had accepted and was operating under the grant, but such city was limited to the right of regulating the use of its streets under its police powers.

To the extent then that the judgment of the District Court of Appeal infringes upon the rights of the City of Culver City under its contract with the City of Los Angeles, Petitioner contends that such infringement amounts to a violation of the "due process clause" as set forth in the Fourteenth Amendment of the Constitution of the United States.

As to that portion of the decision of the District Court of Appeal having to do with the abatement of a nuisance under the court's power to enforce police regulations adopted by the Legislature of the State of California, Petitioner can, of necessity, offer no valid objection. But as to that portion of the Judgment of the District Court of Appeal which, by its terms, requires Petitioner to abandon and forfeit its contract rights and its investment made pursuant to its contract with the City of Los Angeles for the disposal of its sewage, Petitioner contends most strenuously such portion of the Judgment has the effect of taking Petitioner's property in violation of the "due process clause" of the Federal Constitution.

9. The Abatement of the Nuisance Did Not Require or Justify a Judgment Which Has the Effect of Nullifying Petitioner's Contract With the City of Los Angeles.

The action by the people of the State of California was commenced and prosecuted by the Attorney General's Office of the State of California against the defendants, including the Petitioner, for the abatement of a nuisance, under the Code provisions of the Health and Safety Code. We have incorporated those sections of the Health and Safety Code [Supplement pp. 51-53] and the provisions of the Public Health Act [Supplement pp. 49 and 50] which are applicable to the abatement proceedings, and upon which the people based their right to control the manner of sewage disposal into the salt waters of the Pacific Ocean at Hyperion. A cursory study of those Code sections of the Health and Safety Code and the provisions of the Public Health Act, set forth in the Supplement, immediately discloses that the Legislature of the State of California, by the legislation in question, is primarily interested in protecting the health, welfare and safety of its inhabitants only in so far as such health, welfare and safety may be endangered by the pollution by sewage of springs, streams, rivers, lakes, tributaries, wells, or subterranean or other waters [Health and Safety Code, Section 5412; Supplement p. 51], or the salt waters within the jurisdiction of the State of California [Health and Safety Code, Section 5418; Supplement p. 52]. The Code sections and pro-

visions of the Public Health Act in question do not in anywise govern or control the construction, operation or maintenance of sewers as such, but only require permits for the disposal of such sewage after it has once been collected by the sewer system and transmitted to the point of discharge. At that point the Act and Code sections require a permit for the disposal of such sewage and for the operation of "any privy, vault, cesspool, sewage treatment works, sewer pipes or conduits, or other pipes or conduits, *for the treatment and discharge of sewage or impure waters*" etc., which shall overflow lands, pollute or affect any waters intended for animal consumption, or for domestic purposes, or any of the salt waters within the jurisdiction of the State [Section 5414, Supplement p. 51, and Public Health Act Sections 2 and 3, Supplement pp. 49 and 50]. The procedure for obtaining such a permit and the details required to be set forth in the application for such permit, including plans for the construction of the facilities proposed to be used for treatment and disposal of sewage, are outlined in Sections 4322 and 5428 of the Health and Safety Code and in the Public Health Act [Supplement pp. 49 and 50].

The City of Culver City had no permit to construct, operate or maintain a disposal or treatment plant, but on the contrary it was the City of Los Angeles which alone had such a permit [Opinion of District Court of Appeal, Supplement p. 1]. The only permit which the City of Culver City had was one to empty its sewage into the Los Ange-

les Outfall Sewer System [Plaintiff's Exhibit 19, supplied as a part of the Record]. It is submitted that the Judgment or opinion of the District Court of Appeal shows conclusively that the portion of such Judgment ordering the abatement of the nuisance did not require any modifications whatsoever of the terms and provisions of Petitioner's contract with the City of Los Angeles, and it was only because of the provisions of the District Court's judgment, requiring the construction of particular means and facilities and the payment for those facilities by defendants other than the City of Los Angeles, that Petitioner's contract was affected in the slightest respect. The principle of law, that a court, in ordering the abatement of a nuisance should interfere as little as possible with property or property rights of defendants to be charged with such abatement is too well established to require the citation of authorities. It is upon this premise that Petitioner argues now, as it did before the District Court of Appeal and again before the Supreme Court of the State of California, that the Judgment of the District Court of Appeal, and the Judgment of the trial court upon which the former Judgment is based, are void as to Petitioner to the extent that either the Judgment of the District Court of Appeal or the Judgment of the trial court infringe upon the terms and provisions of Petitioner's contract with the City of Los Angeles.

10. Rule of Law as Announced in City of Trenton v. State of New Jersey (262 U. S. 182, 67 L. Ed. 937), Is Not Applicable to Municipalities Operating Under Charters Adopted Pursuant to Authority Granted by the Constitution of the State of Such Municipalities.

The rule as announced by this Honorable Court in the *Trenton* case will be found on page 942 of Vol. 67, L. Ed., and is stated as follows:

> "A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the state."

We respectfully submit that the Charter of the City of Culver City, adopted by the vote of the inhabitants thereof at an election duly called for that purpose, all pursuant to the terms and provisions of the Constitution of the State of California, and particularly pursuant to the provisions of Section 8 of Article XI thereof, is a complete answer to the foregoing rule announced by this Honorable Court in the case of *Trenton v. New Jersey, supra.* Either the City of Culver City has the powers granted to it by the people of the State of California under the California Constitution, and, having those powers, is entitled to protection under the "due process clause" of the Federal Constitution against acts of the Legislature of that State or judgments of the courts of that State, or it must be conceded that the powers purportedly

granted to that City under its Charter and the California Constitution amount at most to so many idle promises which may be brushed aside at the merest whim of either the State Legislature or the courts of that State.

We submit that the powers so vital to the welfare of the inhabitants of such a Charter city and the property acquired by it at the expense of the taxpayer in connection with those matters commonly known and well defined as "municipal affairs" are entitled to the protection which the Federal Constitution affords to all other persons qualified to own or acquire property.

Conclusion.

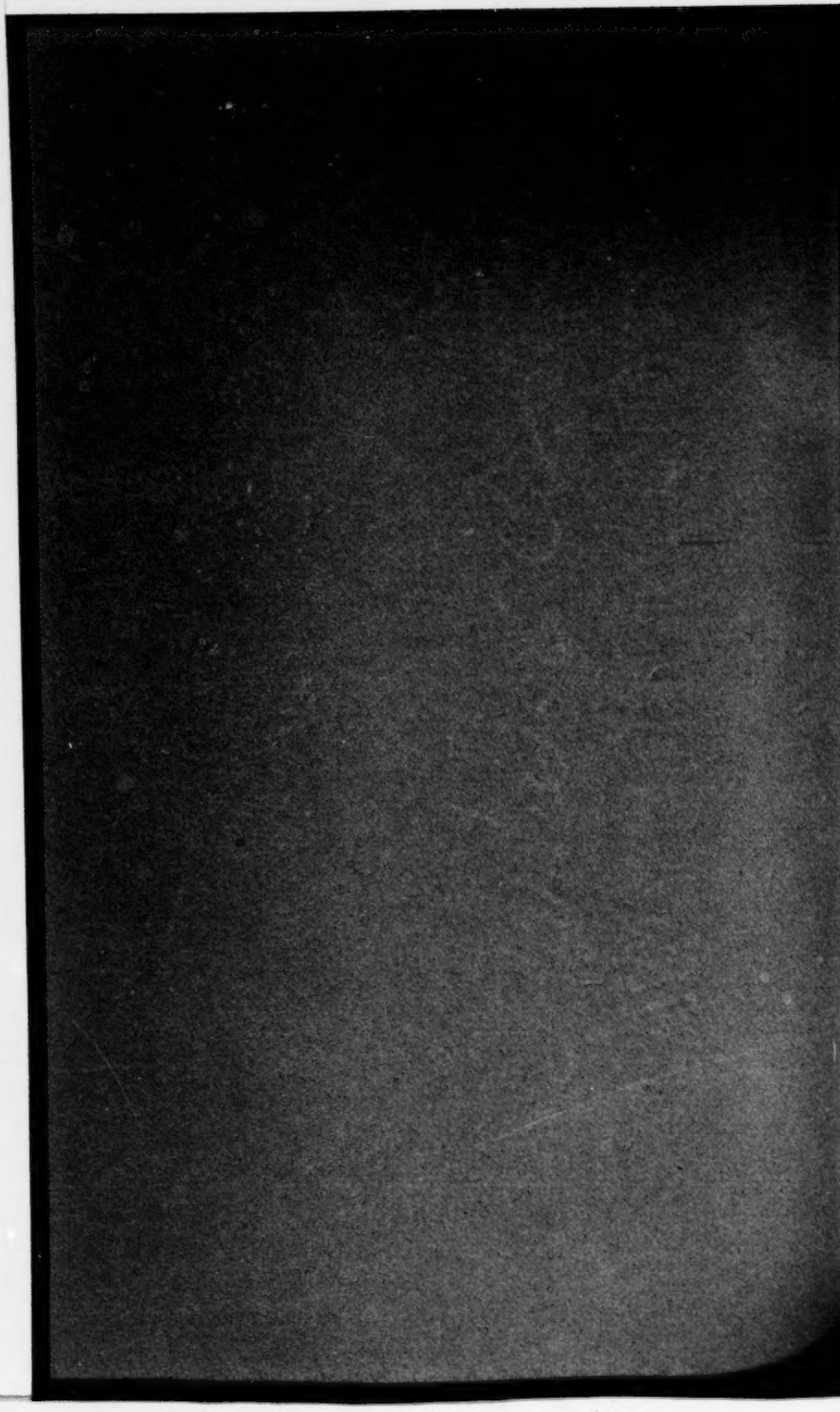
It is respectfully submitted that this Honorable Court, in the exercise of its discretion, should grant a Writ of Certiorari as prayed, and should determine the questions involved as set forth in the Petition herein; that the Judgment or decision of the District Court of Appeal should be set aside as to this Petitioner for the reasons as herein pointed out; that the rule of law as stated in *Trenton v. New Jersey* should be held to be inapplicable to Charter cities of the State of California and in particular to Petitioner; that the questions treated in the Petition are of grave public importance and require an authoritative adjudication by this Court.

Respectfully submitted,

M. TELLEFSON,
City Attorney of the City of Culver City,

E. L. SEARLE,
Special Counsel,

[redacted] STUART M. SALISBURY
Attorneys for Petitioners.



1 **SUPPLEMENT TO PETITION OF CITY OF CULVER CITY, AND ITS OFFICERS AND EMPLOYEES FOR WRIT OF CERTIORARI.**

Opinion of the District Court of Appeal.

[Civ. No. 15691. Second Dist., Div. One. Feb. 11, 1948.]

The People, Respondent, v. City of Los Angeles *et al.*, Defendants; City of Culver City *et al.*, Appellants.

Appeal from a judgment of the Superior Court of Los
2 Angeles County. Joseph W. Vickers, Judge. Affirmed.

Action to restrain certain cities and sanitation districts from maintaining sewage treatment works and sewers without a permit, and to abate a public nuisance. Judgment for plaintiff affirmed.

M. Tellefson, City Attorney (Culver City), Henry McClernan, City Attorney (Glendale), John H. Lauten, Assistant City Attorney, Joseph R. Roark, Deputy City Attorney, Thomas V. Cassidy, City Attorney (Vernon), Edward R. Young, E. L. Searle, Special Counsel, Richard
3 C. Waltz, City Attorney (Beverly Hills), Richard L. Sieg, Charles S. Callahan, Assistant City Attorneys, and Hugh Gordon for Appellants.

Fred N. Howser, Attorney General, and Bayard Rhone, Deputy Attorney General, for Respondent.

WHITE, J.—This is an action in equity instituted by the people of the State of California against all the above-named defendants and appellants and certain of their officers and employees, to restrain them from maintaining, without a permit from the State Board of Public Health, any sewage treatment works, sewers and pipes or con-

duits, or other pipes or conduits for the treatment or discharge of sewage; to restrain the defendants from discharging into any of the salt waters of the state any sewage, impure waters, or matters offensive, injurious or dangerous to the public health, and to restrain the defendants from maintaining a public nuisance on Santa Monica Bay by reason of their deposits therein of sewage and other matters offensive and injurious or dangerous to public health, or deleterious to fish or plant life; and further, for a judgment that the defendants be required to plan, finance, construct, operate and maintain sewage treatment works, sewer pipes and conduits for the safe and sanitary disposal of sewage; and for the abatement of a public nuisance.

Two causes of action are set up in the complaint, the first of which charged the operation of sewage treatment works, sewer pipes and conduits, and the discharge of sewage into the salt waters of the state without a permit; while the second sought to restrain the maintenance of a public nuisance.

Judgment was ordered for plaintiff on both counts, but defendants were given until December 31, 1947, to abate the nuisance.

The only defendants appealing from the judgment are the city of Culver City, its defendant officers and employees; city of Vernon, its defendant officers and employees; South Bay Cities Sanitation District of Los Angeles County, a public corporation, its defendant officers and employees; County Sanitation District No. 4 of Los Angeles County, a public corporation, its defendant officers and employees: County Sanitation District No. 11 of Los Angeles County, a public corporation, its defendant officers and employees; city of Glendale, its defendant

7 officers and employees; and city of Beverly Hills, its defendant officers and employees. The appeal of the last-named municipality and its officers and employees was on motion dismissed by this court.

The factual background surrounding this litigation, as reflected by the record, shows that when some years ago appellant cities and sanitation districts were confronted, because of increasing population, with the necessity of finding a solution to their sewage disposal problems to avoid endangering the health and welfare of their inhabitants, they found themselves financially unable to con-
8 struct an adequate sewer system which would carry their sewage to the Pacific Ocean or to another location which might safely be used for sewage disposal works without endangering the health and welfare of the inhabitants of other communities which might be affected by any sewage disposal facilities within the financial means of these various municipal and public corporations to construct.

In the meantime, the city of Los Angeles had constructed and was operating an outfall sewer system, the capacity of which was greatly in excess of the then fore-
9 seeable needs of the inhabitants of that city. When it became apparent that the sewage of the aforesaid municipalities must be provided with disposal facilities without further delay, each of them turned to the city of Los Angeles, seeking the use of the latter's sewage disposal facilities for a solution of their very acute problems. Thereupon, commencing in 1909, when the city of Vernon made its first contract with the city of Los Angeles for the disposal of sewage originating within the territorial limits of the former municipality, and during the years immediately following, each of the above-named appellant municipalities, and later still the foregoing appellant sani-

tation districts, made contracts with the city of Los Angeles under the terms whereof the last-named city agreed, for a cash consideration, to dispose of some or all of the sewage originating within the particular contracting municipalities and sanitation districts. It is noteworthy that the contracts between the city of Los Angeles and the other municipalities and sanitation districts under discussion were for an indefinite period, or, in some instances, for the life of the outfall sewer system itself, and in no instance carried any provision permitting the contracts to be cancelled when or if the city of Los Angeles required the use of that portion of the capacity of its outfall sewer system covered by the above-mentioned contracts.

In 1922, the city of Los Angeles filed its application with the State Board of Public Health of the State of California for a permit to dispose of sewage through its outfall sewer system into Santa Monica Bay in the Pacific Ocean at Hyperion; and subsequently, pursuant to a permit or order issued January 6, 1923, constructed a treatment plant and submarine tube at Hyperion, which at all times since completion have been used by the city of Los Angeles for the treatment and disposal of all of the sewage disposed of by the Los Angeles Outfall Sewer System, including that sewage flowing into the Los Angeles Outfall Sewer System from the various other municipalities and sanitation districts mentioned above, pursuant to their contracts with the city of Los Angeles for its disposal.

The record shows without contradiction that the Los Angeles Outfall Sewer System, the treatment plant at Hyperion and the submarine tube extending into the Pacific Ocean at that point are owned in their entirety by the city of Los Angeles, and that none of the appellants

13 contracting with the city of Los Angeles for the disposal of their sewage through that outfall sewer system owns or has any right, title or interest in or to the sewer system, treatment plant, or the submarine tube extending into the Pacific Ocean.

There is evidence that on September 30, 1940, and for a long time prior thereto, the city of Los Angeles had violated the terms of the permit of January 6, 1923. In brief, these violations were as follows: A large portion of the sewage was not screened and some of the screen slots were larger than authorized, and frequently raw
14 sewage was by-passed around the screen and discharged either into the submarine tube or directly on the beach. Garbage, fecal matter, solid matter and oily sludge, recognizable as of sewage origin, was visible on all the beaches on Santa Monica Bay from State Park Beach located at the mouth of Santa Monica Canyon south to Malaga Cove. The quality of water along the beach was not safe and suitable for bathing purposes as a result of such discharge and the bacterial count of *escherichia coli* had exceeded 10 per cubic centimeter in an area extending along the beach for a distance of approximately 10
15 miles from Brooks Avenue north of the Venice Pier in Los Angeles to 14th Street, north of the Hermosa Beach Pier in Hermosa Beach. During the year 1945, said area on the north was extended to Seaside Terrace in the city of Santa Monica. There was an objectionable odor condition in the waters and along the beach used by the public. The operation of the treatment works and the disposal of screenings had been conducted in such a manner that it was a menace to public health and had created an offensive odor nuisance. Additional treatment works, changes in outfall, improvements in opera-

16 tion, and ordinary maintenance, had not been provided by defendant city of Los Angeles nor by the other corporate defendants.

By reason of the foregoing violations, the State Board of Public Health, on September 3, 1940, suspended the permit and notified the city of Los Angeles, but granted said city a temporary permit upon condition that it proceed at once to prepare plans for the construction of adequate treatment works and outfall structures, and for the financing of the necessary construction. Such plans were to be filed with the state board and the city was to
17 be ready to commence construction within a year from date. The city of Los Angeles and its officers failed to comply with the terms of the temporary permit, and the State Board of Public Health, on May 18, 1942, revoked said temporary permit and notified the city of Los Angeles thereof. Permits held by certain other defendant municipalities and sanitation districts were also revoked.

All of the appellants concede that a public nuisance existed and that the findings in that regard must be sus-
18 tained. Indeed, as found by the court, the pollution of the beach was a matter of common knowledge. So much so, that approximately 10 miles of beach were quarantined by the State Board of Public Health on April 3, 1943, and following a survey made in 1945 by the State Board of Public Health, it was disclosed that the conditions existing at the beach had become steadily worse since the summer of 1942, and the State Board of Public Health thereupon quarantined an additional area extending from Brooks Avenue in Venice to Seaside Terrace in Santa Monica, on the northerly end of the theretofore quarantined area. With reference to the conceded

existence of a public nuisance, we quote the following from the brief filed on behalf of all but two of the appellants:

". . . we believe it suffices to say that the testimony and other evidence introduced by plaintiff established without question the existence of an unhealthful and unsanitary condition in the waters of the Pacific Ocean adjacent to the Santa Monica Bay Beach and extending some 15 miles along that beach, and that plaintiff's testimony, likewise, conclusively showed the existence of a condition not only unsanitary but dangerous to the health of any one making use of the beaches immediately adjacent to the contaminated waters of the Pacific Ocean in Santa Monica Bay. We repeat, there can be no question that this condition was adequately and conclusively proven."

Upon the conclusion of plaintiff's case, at the request of plaintiff's counsel, paragraph V of the complaint was stricken by the court, leaving the pleading without an allegation that the corporate defendants other than the city of Los Angeles owned any right, title or interest in or to the Los Angeles sewer system, the Hyperion plant or the Hyperion submarine tube, or that said defendants, other than the city of Los Angeles, had any right to repair or rebuild the treatment plant or the submarine tube.

By their answers, each of the defendant municipalities and public corporations alleged in substance that the Los Angeles Outfall Sewer System, the Hyperion treatment plant, and the submarine tube were owned in their entirety by the city of Los Angeles, which said city was the only one having any right to operate, maintain or repair the same or any portion thereof. The answers further alleged that the particular municipality or public corporation

22 filing such answer had contracted with the city of Los Angeles for the disposal of sewage originating in the particular municipality or public corporation in question. Each answering defendant alleged that it had no right or jurisdiction to make any repairs, replacements or changes of any nature whatsoever which concerned or affected the Los Angeles Outfall Sewer System, treatment plant or submarine tube, but that on the contrary, the city of Los Angeles had undertaken and agreed by said contracts to operate and maintain said sewer system, including the treatment plant and submarine tube, and to
23 dispose of the sewage entering the same from within the territorial area of the particular contracting parties.

We deem it unnecessary to set forth the findings of the court other than those challenged by appellants. The court found that on February 14, 1944, the city of Los Angeles employed the engineering firm of Metcalf and Eddy, of Boston, Massachusetts, as consulting sanitary engineers, to investigate the problem of sewage disposal for Los Angeles and associated communities, and to make a report and recommendation for the disposal of sewage from Los Angeles and the corporate defendants named in
24 this action. The report was made on April 25, 1944. The recommendation contained therein was for a high-rate activated sludge plant having a capacity which was the same as the capacity of the existing trunk lines to Hyperion, that is, 240,000,000 gallons per day. That two sites were considered feasible, one at Hyperion now owned by the city of Los Angeles, and the other privately owned land near by, but that the expense of grading and draining the latter site would cost approximately $1,000,000 more than the site at Hyperion. The findings then go into the more technical engineering phases of the plant. It

is then found that the recommended plant would produce a clear effluent and would remove most of the grease and at least 75 per cent of the suspended solids from the sewage. That the use of the treatment plant and the new submarine tube as recommended would entirely abate the nuisance created by the discharge of sewage at Hyperion. That the State Board of Public Health had not officially acted upon a permit, but during the trial the Bureau of Sanitary Engineering of said state department had indicated that the proposed treatment plant would be entirely satisfactory. It might here be noted that there was no contradiction of the fact, of which this court may take judicial notice, that the State Department of Public Health did, on April 10, 1946, grant a permit to the city of Los Angeles to construct and use such a treatment plant.

The court further found that on May 12, 1944, the City Council of Los Angeles and its Board of Public Works accepted and approved said report from the above-named consulting engineers and ordered the city engineer to proceed at once with the design of said proposed treatment plant. The findings then detail the specific steps that had been taken by defendant city of Los Angeles toward the construction of such treatment plant.

The court further found the only other plan for abating the nuisance would be the construction of a sewage treatment plant of what is known as a sedimentation process, which would remove approximately 60 per cent of the suspended solids and grease; that such a plant was recommended by a firm of consulting sanitary engineers of the city of Los Angeles in 1939, but that the recommendations expressly stated that the capacity of such plant would be reached by the year 1944. That

the capacity of such plant could be enlarged by construction of a 10,000-foot submarine tube instead of a 5,000-foot one, but that no detailed plans or specifications of any nature whatsoever had been drafted for such proposed alternate plant.

The court found that it was to the best interests of all the defendants to dispose of the sewage arising in each particular area of said corporate defendants and each corporation to discharge its sewage through a treatment plant to be built at Hyperion, and after such treatment to discharge the effluent from there into the Pacific Ocean at not less than 5,000 feet from shore. The court then found that the defendants city of Beverly Hills, city of Culver City, South Bay Cities Sanitation District, and Sanitation Districts Nos. 4 and 11, among other defendants, had no other feasible means whatsoever of disposing of sewage originating in the areas of said corporate defendants. It was found by the court that the defendant city of Vernon and other named defendants could, at additional expense far greater than their proportionate share of construction of a new proposed high-rate activated sludge treatment plant, dispose of sewage arising in the corporate limits of said cities through the sewage system of the County Sanitation District, which treatment plant is located at Harbor City, and the effluent of which is discharged into the Pacific Ocean at White's Point near San Pedro.

With reference to the defendant city of Glendale, the court found that it may have an alternative method of disposing of sewage; that a report and recommendation of a consulting engineer was received in evidence, but that no application had been made to the State Board of Public Health for a permit to construct such a plant. The

31 court further found that it did not determine in this proceeding the feasibility of such a proposed plant, but did find that the natural and probable consequences of the discharge of the effluent from there into the Los Angeles River would be the contamination through percolation of the wells of the communities to the south and west of the Los Angeles River as far as the Inglewood Basin.

The court further found that defendant city of Los Angeles had a sufficient unexpended balance to pay for the engineering services for the completion of final plans
32 and specifications for the high-rate activated sludge treatment plant; that said city had appropriated $2,000,000 for the submarine tube; that at the time of trial said city had approximately $7,200,000 in its reserve fund; and that on April 3, 1945, a bond issue was voted by the electorate of the city of Los Angeles in the sum of $10,000,000 for the payment of the share of said city for the construction of said high-rate activated sludge plant.

It was then found that the city of El Segundo, the city
33 of South Pasadena, the city of Alhambra, and Universal Pictures have at all times prior to the determination of this action been willing and able to pay their respective proportionate shares of said new high-rate activated sludge treatment plant, as was the defendant A. F. Gilmore Company; that on December 4, 1945, the city of Santa Monica approved a bond issue in the principal sum of $875,000 for the purpose of acquisition or the right to use a sewage treatment plant and disposal works under contract to be made with the city of Los Angeles, or other cities, and is now ready, willing and able to pay for its share.

34 The court then found that except for the defendants set forth in the three preceding paragraphs of the findings, none of the corporate defendants had funds available for the payment of its proportionate share of the cost of a new treatment plant, and that none of them had taken any steps whatsoever to raise funds either by bonded indebtedness or otherwise for the payment of such proportionate share.

With reference to the expense, and the agreement among the various defendants concerning the construction, of the new treatment plant, the court found as follows:

35 "That it was agreed by those present at a meeting of the City Engineers of the various cities, the Chief Engineer and General Manager of the County Sanitation Districts named as defendants herein and representatives of the private corporations named herein, that there be allocated to the defendants the ultimate capacity of said proposed new high-rate activated sludge treatment plant according to the figures on Exhibit 23; that the proportionate cost of each of the corporate defendants was based upon a total estimated cost of $21,000,000.00; and
36 the cost of each corporate defendant was in the ratio of the gallonage allotted to 240 as the estimated share to be contributed by each corporate defendant is to 21,000,000; that said estimated share of expense was arrived at on the basis of the percentage ultimate flow in the new plant to the total cost thereof and without reference to any other obligations or liabilities as between the City of Los Angeles and the separate respective corporate defendants."

The court then found that it was feasible to have installed, ready for operation, six chlorinating machines

by June 1, 1946, and to let a contract for a new submarine tube by April 1, 1946; that it was feasible to have all the detailed plans for the entire new plant completed by July 1, 1946; that it was feasible to advertise for bids for the excavation of the site and to award a contract by March 1, 1946; and that it was feasible to have fully constructed, in its entirety and in full operation, the said proposed new high-rate activated sludge treatment plant by December 31, 1947. That at the time of the signing of the findings the feasibility of intermediate steps could not be determined presently, but if necessary at some future date, evidence of such facts might be received.

Insofar as pertinent to a consideration of the issues raised on this appeal, as conclusions of law the court determined that the defendants have and are maintaining a public nuisance in Santa Monica Bay by the discharge of sewage at Hyperion; that the primary duty and obligation rests upon each corporate defendant to dispose of the sewage originating within its respective limits in a safe and sanitary manner; that any right created by contract between two several defendants did not release either or any of them from the primary obligation to dispose of sewage in a safe and sanitary manner; that regardless of contractual or other relationships existing among the defendants, the plaintiff was entitled to an injunction restraining each and all defendants from maintaining, without a permit from the State Department of Public Health, any sewage treatment works or other facilities for the treatment or discharge of sewage into Santa Monica Bay, such injunction to be effective on and after December 31, 1947. That the plaintiff was entitled to an injunction restraining each one of the defendants from

discharging into any of the salt waters within the jurisdiction of the State of California, any sewage or other matter or substance in any manner likely to be offensive, injurious or dangerous to the public health, effective on and after December 31, 1947.

As further conclusions of law, the court determined:

"That the plaintiff is entitled to a mandatory injunction requiring the defendants and each of them and their successors, officers, agents, servants and employees to plan, construct, operate and maintain sewage treatment works, pipes and conduits for the safe and sanitary disposal of sewage within as short a time as is feasible; and in this connection the plaintiff is entitled to such other and further orders as may be made from time to time requiring the defendants and each of them and their successors, officers, agents, servants and employees to take such additional steps within such additional time as may be determined by the court for the temporary or permanent abatement of the public nuisance stated herein."

And further:

"That each corporate defendant which does not adopt some approved method of disposing of sewage originating in the corporate limits of such defendant other than through a new treatment plant or works at or near Hyperion shall be required to advance the proportionate share of such corporate defendant according to the ultimate proportionate use reserved for such defendant towards the construction of a new treatment plant or works at or near Hyperion; *but no corporate defendant shall be prevented from adopting some other method of disposing of sewage originating in the corporate limits of such defendant providing such method is approved*

by the State Board of Public Health of the State of California, and that such method is a safe and sanitary method of disposal of sewage, and providing that said plan or method is in full operation on or before the 31st day of December, 1947." (Emphasis added.)

Judgment was entered accordingly.

Appellants first challenge the right of the court to require them to abate a nuisance resulting from unhealthful conditions caused by sewage emptied into the salt waters within the jurisdiction of the State of California where such sewage is emptied into the ocean through the outfall sewer system, treatment works and submarine tube owned in their entirety by and under the exclusive jurisdiction and control as to maintenance and operation of another municipal corporation where the latter corporation has, by contract with the appellant municipalities or public corporations, undertaken, for a price, to accept such sewage and to dispose of the same in the Pacific Ocean through its outfall sewer system, treatment works, and submarine tube, in a good and workmanlike manner, and without creating a public nuisance. Appellants rest their claim in this regard on the premise that the instrumentality causing the nuisance must be shown to have been owned, operated and controlled by a defendant sought to be enjoined, either alone or acting jointly with all other defendants, and that to validate the judgment entered herein, it must be shown that the presence of the sewage in the waters of Santa Monica Bay and on the shores adjacent thereto, which caused the nuisance, resulted from the unlawful or negligent act of each defendant named in the judgment, acting alone, or in concert with all other defendants.

46 Insofar as the cause now engaging our attention is concerned, we are not in accord with appellants' contention.

The instant proceeding is predicated upon two separate causes of action, the first of which is for violation of the health and safety provisions of the Health and Safety Code, and the second for the maintenance of a nuisance. Judgment was granted on both causes of action.

Sections 5410 to 5464 of the Health and Safety Code contain the law applicable to the disposal of sewage. In section 5414 it is provided that no person, without a permit, shall maintain any sewage treatment works, pipes
47 or conduits for the treatment and discharge of sewage whereby such sewage shall empty, flow, seep, drain, condense into or otherwise pollute or affect any of the salt waters within the jurisdiction of the state. Section 5418 provides that no person, without a permit, shall deposit or discharge any sewage, trade waste, etc., into any salt waters within the jurisdiction of the state. Section 5420 provides that no person, without a permit, shall maintain any sewage treatment works, sewer pipes or conduits for the treatment or discharge of sewage. Sections 5421
48 to 5430 relate to the applications for permits, hearings, notices, investigations, etc., the findings requisite to issuance of a permit and conditions warranting a denial. Section 5438 provides that this article of the Health and Safety Code does not limit the power of any city or county to declare, prohibit and abate nuisances or limit the power of the State Department of Public Health to declare or abate nuisances. Section 5442 provides for the suspension of a permit.

Section 5443 provides that violation of this article of the code may be enjoined by any court of competent jurisdiction or by the State Department of Public Health.

49 Section 5444 provides that anything done, maintained, or suffered in violation of any of the provisions of this article is a public nuisance, dangerous to health, and may be summarily abated as such.

Sections 5460 to 5464, relating to penalties for violations of the foregoing code provisions, may be disregarded for the reason that during the trial penalties in this proceeding were waived.

The evidence shows that the city of Los Angeles had a
50 permit to discharge sewage at Hyperion from the time of the construction of the screening plant and submarine tube at Hyperion until September 3, 1940, when the permit was suspended. At the time of the suspension of the permit a temporary permit was issued pursuant to section 5435 on condition that the city proceed at once to prepare plans and construct necessary works. The conditions of the temporary permit were not complied with, and on May 18, 1942, the State Board of Public Health revoked the temporary permit. The appellant County Sanitation District No. 11 never at any time had a per-
51 mit of any kind whatsoever from the State Department of Public Health to maintain any sewage treatment works, sewage pipes, or conduits, or to discharge any sewage into the salt waters of the state. The appellants city of Culver City, city of Vernon, County Sanitation District No. 4 and South Bay City Sanitation District each held a permit from the State Board of Public Health to connect its sewage system to the sewage system of the city of Los Angeles and thereby discharge its sewage at said Hyperion plant, but each of said permits held by said appellants was revoked by the state board on October 16, 1943.

52 None of the appellants can successfully contend that it is not maintaining sewage treatment works, sewer pipes or conduits for the treatment and discharge of sewage into the salt waters within the jurisdiction of the state, because it was shown quite precisely the amount of such discharge by each of said appellants.

The instant action was instituted in the name of the people of the State of California, on behalf not only of the people, but of the State Department of Public Health, the State Fish and Game Commission and the State Parks Commission. The court was, therefore, pursuant to the
53 provisions of section 5443 of the Health and Safety Code, clothed with jurisdiction, in a proper case, to restrain appellants from maintaining any sewage treatment works and from depositing and permitting to drain into the salt waters of the state any sewage, without a permit from the State Department of Public Health.

The statutory requirement that the city of Los Angeles have a permit, as required by sections 5414, 5418 and 5420 of the Health and Safety Code, was not affected by any contracts appellants may have had with said city
54 to dispose of their sewage through the screening plant and submarine tube at Hyperion. While the State Department of Public Health was cognizant of the existence of some of such contracts due to the fact that permits had previously been issued to some of the appellants for the discharge of their sewage at Hyperion, nevertheless such state department is not bound by the terms of contracts with others than itself, and the statutory power to suspend or revoke such permits is not affected or controlled by a contract existing between the permittee and others.

The evidence is uncontradicted that on October 16, 1943, prior to the commencement of this action, the per-

55 mits held by the appellants, as well as that held by defendant city of Los Angeles, were revoked by the State Department of Public Health. Therefore, under the provisions of the Health and Safety Code hereinbefore set forth, the judgment rendered herein, and based upon plaintiff's first cause of action, could well be affirmed.

However, because of the great public interest attached to this litigation, and its importance to the municipalities and public corporations affected thereby, we are disposed to give consideration to the contentions of appellants that because of their aforesaid contractual relations with the
56 city of Los Angeles, they were not responsible for the admittedly existing unhealthful condition, and cannot be required to abate a conceded public nuisance resulting therefrom.

In support of their contention that they are not legally responsible for the maintenance of a nuisance and cannot be held liable for the cost of abating the same because the instrumentality causing such nuisance was neither owned by them nor under their jurisdiction or control, appellants lean heavily upon the case of Carmichael v.
57 City of Texarkana, 94 F. 561, and 116 F. 845 [54 C.C.A. 179, 58 L.R.A. 911]. In this case riparian owners of a stream sued a city and joined therein either individual householders or industries as parties defendant, for the pollution of the stream by the discharge of sewage therein. The court held that the inhabitants and industries within the city were improperly joined with the municipality in the action, on the ground that the inhabitants of the city had no right or authority to construct or operate a sewer system within the municipality and that they had no control over the manner of its construction, repair or alteration, because all such control was by

law vested in the city or town; that the law required the city to operate a sewer system within its boundaries and required it to do so in such a manner that no unnecessary injury would be inflicted upon anyone. Holding that the test of liability for the action of another is the power to command or control the manner of the performance of those actions, the court pointed out that the inhabitants were without authority to construct or operate a sewer system, but were possessed of the right to have the city dispose of their sewage by means of a system constructed and operated exclusively by the municipality in such a manner as to avoid injury to others. In other words, the inhabitants were not acting jointly with the city in the operation of the sewer system. To the same effect are the cases of Adler & Co. v. Pruitt, 169 Ala. 213 [53 So. 315, 32 L.R.A.N.S. 889], and Hampton v. Spindale, 210 N. C. 546 [187 S.E. 775, 107 A.L.R. 1188], also cited by appellants.

No such situation, however, confronts us in the case at bar. No inhabitants of any municipality or public corporation are joined as defendants herein.

A primary obligation rested upon appellants to dispose of sewage accumulating within their respective boundaries, and an equally binding obligation rested upon them to dispose of the sewage in such a way that it would entail no injury to other parties. And appellants cannot relieve themselves by contract with other municipalities of their primary obligation imposed upon them by law. In the case at bar, the most that can be said is that by contract with the city of Los Angeles, the latter afforded to appellants the use of its sewer facilities to carry and dispose of appellants' sewage at Hyperion. Each appellant proportionately started the chain of cir-

61 cumstances that caused the nuisance sought to be abated when they emptied their sewage into the outfall sewer of the city of Los Angeles. The mere fact that appellants had a contract with the city of Los Angeles for the disposal of such sewage does not in the least enter into the merits of this action as between the people of the State of California and appellants for abatement of a nuisance arising from pollution of salt waters within the jurisdiction of the State of California and of the adjoining beaches, by sewage originating in part within the territorial limits of the aforesaid appellant municipalities and
62 public corporations. There rested upon appellants a bounden duty to dispose of their sewage in such a manner as not to bring injury or damage to others. It therefore follows, that the fact that the screening plant and submarine tube at Hyperion are owned, maintained and controlled by the city of Los Angeles does not relieve appellants of responsibility for the admitted public nuisance sought to be abated, if they contributed thereto.

The trial court was not concerned, and rightly so, with the contractual relations, privileges and obligations between appellants and the city of Los Angeles, because such con-
63 tracts will not relieve appellants of an obligation imposed upon them by law. And the liability of appellants was not minimized or affected by the action of the court in striking from the complaint the aforesaid paragraph V.

Appellants' contention that it is improper in a single action to join defendants whose actions separately constitute a nuisance, but that each must be sued separately, is without merit. Whatever may be the rule in other jurisdictions or was formerly the rule in California, since the adoption of section 379a of the Code of Civil Procedure the rule no longer exists.

64 Appellants' claim that negligence upon their part is a necessary element in an action to abate a nuisance is equally without merit. So far as this case is concerned, the question of negligence is wholly irrelevant. There may be cases wherein the question of whether the maintenance of a given condition amounts to a nuisance depends upon whether or not it is due to negligence, but the pollution of ocean waters and adjoining beaches in the manner charged herein is a violation of the rights of the people of the State of California, which amounts in law to a nuisance, regardless of whether or not it is due
65 to any negligent act or omission (Kafka v. Bozio, 191 Cal. 746, 748 [218 P. 753, 29 A.L.R. 833]).

We also regard as immaterial the question of whether the Los Angeles City Outfall Sewer System, treatment plant and submarine tube constitute a public utility, and that as the owner and operator of such public utility the city of Los Angeles is the only party against whom a cause of action herein could be stated. There is no evidence, and certainly it cannot be successfully contended, that the city of Los Angeles operates a public utility for the benefit of appellants or other municipalities or public
66 corporations.

We come now to a consideration of appellants' contention that the trial court was without power to dictate or prescribe the means or facilities which shall be used or constructed to abate a nuisance, or to set forth the means or facilities which it deems necessary to prevent a continuance or recurrence of the nuisance by reason of causes not then in existence but anticipated to occur in the future.

We are in accord with the claim of appellants that the court does not possess the power to indicate or prescribe

the means or facilities that shall be constructed or used to abate the nuisance. However, an examination of the record herein reveals that the court did not decree or prescribe the means or facilities to be used, nor require that any particular plant be built. Conclusion of Law XI, hereinbefore set forth, provides that only those appellants who do not adopt *some* approved method of disposing of their sewage, other than through a new treatment plant or works at or near Hyperion, "shall be required to advance the proportionate share of such corporate defendant according to the ultimate proportionate use reserved for such defendant towards the construction of a new treatment plant or works at or near Hyperion; *but no corporate defendant shall be prevented from adopting some other method of disposing of sewage* originating in the corporate limits of such defendant, providing such method is approved by the State Board of Public Health of the State of California, and that such method is a safe and sanitary method of disposal of sewage, and providing that said plan or method is in full operation on or before the 31st day of December, 1947." (Emphasis added.)

The judgment also gives to each appellant the opportunity to determine whether to withdraw from the Los Angeles city system and set up any method of treatment of their sewage which would take it from the Los Angeles system and thereby remove it as a contributing cause to the admittedly existing nuisance. It should be remembered that the city of Los Angeles was also a defendant in the present proceeding, and throughout the trial took the position that it desired to abate the nuisance and that it already was engaged in planning for the construction of a new sewage treatment plant. During the trial, the

70 court heard evidence as to the nature of those plans and also heard evidence concerning all other possible or suggested plans. None of the appellants had any plan whatever other than that of the city of Los Angeles, except the city of Glendale, which had hired a consulting engineer. That city had an alternative plan, and one of the purposes of receiving evidence with reference to suggested plans was to determine whether or not such plan was feasible to abate the nuisance. There was evidence that the plant proposed to be built by the city of Los Angeles would alleviate conditions which brought about
71 this litigation. There can be no question that the court was justified in giving mandatory directions to the city of Los Angeles to execute the plan which the city had already adopted and submitted to the court. The provisions of the judgment as to the city of Los Angeles have become final. Appellants were given an opportunity by the judgment to erect their own plants or to otherwise provide for their sewage disposal. It would appear from the record that appellants have indicated that their only plan is to dispose of their sewage through the Los Angeles system. The chief engineer and general manager of
72 the County Sanitation Districts positively and unequivocally stated that as far as such districts which had been sewering through Hyperion were concerned, it would be to their best interests to join with the city of Los Angeles in the new plant and that the same situation was applicable to the cities of Vernon and Culver City. The latter municipality has filed an application with the State Board of Public Health to be permitted to do so.

The city of Los Angeles is bound to construct the system which is proposed, which the court approved, and which the judgment has made binding upon that city. To

73 that extent, at least, the final judgment against the city of Los Angeles is final also as to the appellants.

Appellants are permitted to adopt some other method of disposing of their sewage, subject only to the statutory requirement that such method be approved by the State Board of Public Health. They are required to pay a proportionate share toward the Los Angeles system only in the event that they desire to take part in the use of such system. The testimony taken with reference to the different types of treatment plants that could be built was justified by the position taken by the city of Los Angeles
74 at the trial that it desired to abate the nuisance and was already engaged in planning for the construction of a new sewage treatment plant to accomplish that purpose. None of the appellants was prejudiced by such testimony or the findings thereon.

In the type of case now before us, the trial court is sitting as a court of equity, and as such is clothed with broad powers to accomplish the ends of justice in the proceeding. The findings and conclusions of law herein, supported as they are by substantial evidence, indicate
75 that there is a strong possibility of working out some solution at reasonable cost that may be of benefit to all parties concerned. The state has a very definite interest in preserving and protecting public health, and in seeing that the same is not endangered. While not requiring appellants to avail themselves of the Los Angeles municipal system, the court attempted, in the event any of the appellants desired to take part in the construction of the high-rate activated sludge plant at Hyperion, to work out a fair and just solution of the proportionate costs to be paid by each appellant according to the capacity allotted to it as determined upon by its own engineer.

76 Such a course met with judicial approval in the case of Rancho Santa Margarita v. Vail, 11 Cal. (2d) 501, 558, 561 [81 P. (2d) 533].

Appellants' contention that the court ordered the construction of a sewage treatment plant larger than necessary to abate the nuisance is answered by the fact that defendant city of Los Angeles has agreed to take all the capacity not otherwise allotted.

That appellant municipalities and sanitation districts, as they assert, were "without exception, according to testimony of their engineers and officers, utterly unable
77 to finance the construction of sewage disposal facilities and sewage treatment works necessary for the disposal of their sewage by means independent of the sewage and treatment plant facilities of the City of Los Angeles," furnishes no ground for a reversal of the judgment herein. That a nuisance existed was admitted. The court was clothed with jurisdiction to order its abatement, and a primary obligation rests upon each appellant to dispose of its sewage in such a manner as not to injure others. The court solved its problem by ordering the
78 abatement of the nuisance, and went further, in answer to appellants' contention that they were financially unable to provide independent facilities to dispose of their sewage, by offering them the use of the Los Angeles city project, requiring only that they pay their proportionate share, based on the use they might make thereof.

It is true, as urged by appellants, that the State Board of Public Health is vested with exclusive jurisdiction to approve or disapprove plans for facilities used in connection with the disposal of sewage. As suggested by respondent, this court may take judicial notice that the State Board of Public Health has approved and has issued

79 a permit to the city of Los Angeles authorizing the construction of the new proposed plant.

Appellants' contention that the judgment rendered herein violates the provisions of article I, section 13, of the Constitution of California, and the Fifth and Fourteenth Amendments to the Constitution of the United States, in that its effect is to deprive appellants of their property without due process of law, cannot be sustained. Appellants predicate this argument on the premise that the court was without jurisdiction or right to disregard their several contracts with the city of Los Angeles; that
80 in so doing and requiring appellants to contribute funds toward the construction of the new treatment plant and submarine tube in excess of the amounts which they are severally obligated to pay to the city of Los Angeles under their respective contracts, appellants' property will, to the extent of such excess payments, be taken without due process of law.

The judgment required that each appellant should pay a proportionate share of the cost of the new system according to the capacity allotted to each appellant, but only
81 in the event such appellant desired voluntarily to sewer through Hyperion.

This is a proceeding initiated by the people of the State of California on behalf of the state itself, and on behalf of the State Department of Public Health, as well as other state agencies, against all named defendants, to abate a public nuisance. Therefore, the court rightfully refrained from passing upon any of the rights, obligations or liabilities affecting the various defendants by reason of their contractual relations with each other, and left those matters open for future adjudication in a proper proceeding. Although the aforesaid contracts concerned the disposal

of sewage, the court would not be justified in this action to adjudicate the rights existing between the various appellants by reason of their contracts one with the other. Insofar as the judgment herein is concerned, if any of the appellants have any rights against the city of Los Angeles, or *vice versa*, by reason of any existing contract, such rights have been preserved and may be enforced in a proper action. All of appellants' property and rights were preserved to them and the judgment in the instant action does not impair or violate any of their constitution rights.

Other points urged for a reversal are noted, but we deem them untenable and therefore requiring no special discussion.

For the foregoing reasons, the judgment is affirmed.

York, P. J., and Doran, J., concurred.

85 **Agreements Between the City of Los Angeles and the City of Culver City, for the Construction and Maintenance of a Sewage Treatment Plant, the Necessary Appurtenances Thereto and the Necessary Disposal of Said Sewage Therefrom.**

The contract between the City of Culver City and the City of Los Angeles dated July 6, 1922, and a supplemental contract dated October 7, 1925, were offered in the trial of the action as Defendant Culver City's Exhibit "A" for Identification. The contract of July 6, 1922
86 is set forth in this supplement at length. However, the modifying agreement of October 7, 1925 is not set forth for the reason that its terms and provisions do not affect the question under consideration in the foregoing Petition. Said contract of October 7, 1925 provides: "It is further mutually understood and agreed that this contract shall in no wise affect nor alter the terms of that certain contract heretofore entered into by and between the parties hereto on the 6th day of July, 1922."

87 **Agreement.**

THIS AGREEMENT, made and entered into this 6th day of July, 1922, by and between THE CITY OF LOS ANGELES, a municipal corporation of the State of California, hereinafter called the party of the first part, and the CITY OF CULVER CITY, a municipal corporation of the State of California, hereinafter called the party of the second part;

Witnesseth:

That the party of the first part, in consideration of the conditions hereinafter agreed to be performed by the party

of the second part, does hereby covenant and agree with said party of the second part, as follows:

I.

That said party of the first part does hereby covenant and agree to acquire a site in the vicinity of the City of Culver City, for the purpose of constructing thereon a sewage treatment plant, together with the necessary disposal therefrom, for the purpose of treating all sewage of Culver City, all sewage from that portion of the City of Los Angeles included within the following described territory:

Beginning at a point on the southwesterly line of Overland Avenue at its intersection with the northwesterly boundary line of Culver City; thence northwesterly along said line of Overland Avenue to its intersection with the northwesterly line of Tabor Street; thence northeasterly along said last mentioned line to its intersection with the westerly prolongation of the boundary line of the City of Los Angeles established May 22, 1915; thence in a general easterly direction along said boundary line and the easterly prolongation thereof, to an intersection with the northwesterly boundary line of Culver City; thence in a general southwesterly direction along last said mentioned boundary line to the point of beginning:

and all excess sewage from the City of Los Angeles necessary to be cared for as a supplement to the present outfall Sewer of the City of Los Angeles.

II.

That said party of the first part will, within ten (10) days after the execution of this agreement, begin advertising for bids (if the work is to be done by contract)

or begin actual construction (if the work is to be done by the City itself) of the extension of the pipe line from its present terminus east of Mesa Drive, along rights-of-way as already secured, toward Figueroa Street, and will, at its own cost and expense, as soon after the acquisition of said site as conditions permit, and not more than ten (10) days after the necessary rights-of-way to said site are secured, or after the City of Los Angeles becomes entitled to possession thereof, commence the construction of a sewage treatment plant and pipe line, said plant to be of the "IMHOFF TANK AND SPRINKLING FILTER" type; and upon completion thereof said party of the first part will, at its own cost and expense, maintain and operate the same in an efficient and up-to-date manner, and so as to produce as clear and stable an effluent therefrom as is practicable under all the circumstances from an engineering standpoint, and assume all responsibility therefor; and said party of the first part further agrees that in so maintaining and operating said plant it will take care of the sewage of CULVER CITY without cost or expense to said party of the second part.

The party of the second part may, if it finds itself unable to obtain the rights-of-way by means other than condemnation, so notify the party of the first part, and in that case the City of Los Angeles will begin condemnation proceedings and make the necessary deposit in Court to obtain possession of said rights-of-way; and in that case the moneys which the party of the second part would have paid toward the said rights-of-way shall be paid towards the costs of the treatment plant instead.

III.

94 The said party of the first part will, as soon after the execution of this agreement as conditions permit, secure a right-of-way from said site of said sewage treatment plant to Ballona Creek, for the purpose of carrying the necessary effluent from said plant; all cost and expense in connection with said right-of-way to be borne by said party of the first part.

THAT IN CONSIDERATION OF THE CONDITIONS hereinabove agreed to be performed by said party of the first
95 part, said party of the second part does hereby convenant and agree with said party of the first part, as follows:

I.

That said party of the second part will, as soon after the execution of this agreement as conditions permit, procure the necessary rights-of-way for the construction and maintenance of the temporary Outfall Sewer of the City of Los Angeles from Figueroa Street to the site of said plant hereinabove referred to. Said right-of-way shall also constitute a permanent right-of-way for the North
96 Outfall Sewer, and shall continue from the point of diversion (said point of diversion being a point on Machado Street, 1639 feet northwesterly from the intersection of First Street (Culver City) as shown by Map No. 28885 on file in the office of the City Engineer of the City of Los Angeles). Said party of the second part shall also procure the necessary right, or rights-of-way for connecting with the Culver City mains at the Culver City limits, the mains of that portion of the City of Los Angeles included within the territory hereinabove on pages 1 and 2 of this agreement, particularly described.

97 II.

That said party of the second part will, at its own cost and expense, build all sewer mains and appurtenances necessary to carry its sewage to a point connecting with said temporary line running to said sewage disposal plant, and that in building said sewer mains said party of the second part will make the same of fifteen inch (15") internal diameter on the west side of an eighteen inch (18") internal diameter on the east side of the railroad crossing the Pacific Electric Railway (Redondo Line) on First Street (Culver City), to carry the sewage of that
98 part of the City of Los Angeles which is particularly described on pages 1 and 2 of this agreement.

It Is Mutually Covenanted and Agreed:

I.

That upon completion of said Permanent North Outfall Sewer by said party of the first part, the said party of the second part shall have the right to connect therewith at the prolongation of the line of Jackson Street, if extended, at an elevation of thirty-seven (37) feet above
99 the Los Angeles City datum plans as per Profile No. 14060, now on file in the office of the City Engineer of the City of Los Angeles, with said Permanent North Outfall Sewer, upon payment to said party of the first part of the sum of Thirty Thousand Dollars ($30,000.00); it being expressly understood and agreed, however, that if said party of the second part elects to connect with said Permanent North Outfall Sewer that the payment of said sum will entitle the said party of the second part to connect only that part of Culver City as the same exists at the time of the execution of this agreement, and that should

any additional territory be acquired by said party of the second part, said party of the second part shall have the right to connect such territory with said Permanent North Outfall Sewer upon payment to said party of the first part of the sum of Forty Dollars ($40.00) per acre of all areas so annexed.

II.

That notwithstanding other expressions in this agreement contained, said party of the second part does not obligate itself to expend for the construction of its sewer mains and the securing of its rights-of-way pumping plant and sites and all other obligations under this contract, more than the sum of Seventy-five Thousand Dollars ($75,000.00); and it is hereby further expressly understood and agreed that if the expenditures of said party of the second part do not amount to the sum of Seventy-five Thousand Dollars ($75,000.00) for the construction of said sewer mains, pumping plant, including site, and the securing of said rights-of-way, then and in that event the difference in amount between the sum of Seventy-five Thousand Dollars ($75,000.00) and the amount actually paid by said party of the second part for the performance of the conditions hereinbefore in this paragraph specifically set forth shall be applied toward the payment of the cost of the Sewage Treatment Plant hereinabove referred to and the necessary appurtenances thereto.

It is further agreed that no expenditures shall be made by party of the second part out of said Seventy-five Thousand Dollars ($75,000.00) for the construction of any mains other than those shown approximately on plan attached hereto and marked Exhibit "A" and made a part hereof.

It is the intention of this agreement to provide that the City of Los Angeles shall be obligated to operate the temporary treatment plant herein provided for until the completion and placing in use of the Permanent North Outfall Sewer, at which time Culver City shall have the right to connect therewith during the life of said outfall sewer, and discharge its sewage therein, upon payment of the City of Los Angeles of the sum of Thirty Thousand Dollars ($30,000.00); provided that if the people of the City of Los Angeles shall determine that in lieu of the construction of the Permanent North Outfall Sewer the permanent disposal of Los Angeles Sewage shall be by some method of treatment, then Culver City shall have the right to connect with such permanent disposal system and discharge its sewage therein, and shall pay to the City of Los Angeles therefore, annually, the actual net cost of taking care of the sewage discharged into such plant, or plants, by Culver City, and said party of the second part shall be relieved of the obligation of paying said sum of Thirty Thousand Dollars ($30,000.00); in either case said party of the first part undertakes toward said party of the second part the obligation of efficiently and properly caring for the sewage of Culver City after it has been discharged into said Outfall Sewer, or permanent treatment plant, as the case may be.

In Witness Whereof, said party of the first part has, by order of its City Council caused this agreement to be executed by the Mayor and the City Clerk of the City of Los Angeles, and the party of the second part has,

by order of its Board of Trustees, caused this agreement to be executed by the President of said Board, the day and year first above written.

THE CITY OF LOS ANGELES,
By GEO. E. CRYER,
Mayor.

By ROBT. DOMINGUEZ,
City Clerk.

THE CITY OF CULVER CITY,
By CLYDE W. SLATER,
President of Board of Trustees.

ATTEST:

(Seal) By NELLIE BROWN HAUS,
City Clerk of the City of Culver City.

Approved this 6th day of July, 1922.

JESS E. STEPHENS,
City Attorney.

Approved this 6th day of July, 1922.

JOHN F. IMEL,
City Attorney of Culver City.

Portions of the Charter of the City of Culver City.

Approved by the Legislature of the State of California as Assembly Concurrent Resolution No. 27, Chapter 24, S. L., 1947, and Filed in the Office of the Secretary of State January 21st, 1947.

We, the people of the City of Culver City, State of California, do ordain and establish this Charter as the organic law of said City under the Constitution of said State.

Article I. Name of City

Section 100. Name. The municipal corporation now existing and known as the "City of Culver City" shall remain and continue to exist a body politic and corporate, as at present, in name, in fact and in law.

Article II. Boundaries

Section 200. Boundaries. The territory of the City shall be that contained within its present boundaries as now established, with the power and authority to change the same in the manner provided by law.

Article III. Succession

Section 300. Rights and Liabilities. The City of Culver City, as successor in interest of the municipal corporation of the same name, heretofore created and existing, shall own, possess, control, and in every way succeed to and become the owner of rights and of property of every kind and nature by said existing municipal corporation owned, possessed or controlled and shall be subject to all the debts, obligations, liabilities and duties of said existing corporation.

Section 301. Ordinances Continued in Effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, are here-

by continued in force until the same shall have been duly repealed, amended, changed or superseded by proper authority.

Section 302. Rights of Officers and Employees Preserved. Nothing in this Charter contained, except as specifically provided, shall affect or impair the civil service, pension and retirement rights or privileges of officers or employees of the City or of any office, department or agency thereof, existing at the time this Charter takes effect.

Section 303. Continuance of Present Officers and Employees. The present officers and employees, shall without interruption, continue to perform the duties of their respective offices and employments for the compensation provided by the existing ordinances, resolutions, rules or laws, until the appointment and qualification of their successors under this Charter and subject to such removal and control as is herein provided.

Elected Officers. The members of the City Council and of the Board of Education of the Culver City School District, the City Clerk, and City Treasurer in office at the time this Charter takes effect shall continue in office until the expiration of their respective terms and until their successors are elected and qualified.

Section 304. Continuance of Contracts and Public Improvements. All contracts entered into by the City, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which proceedings have been instituted under laws existing at the time this Charter takes effect, in the discretion of the City Council may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws or may be continued or perfected hereunder.

Section 305. Pending Actions and Proceedings. No action or proceeding, civil or criminal, pending at the time

when this Charter takes effect, brought by or against the City or any office, department or agency thereof, shall be affected or abated by the adoption of this Charter or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any office, department or agency party thereto, by or under this Charter, may be assigned or transferred to another office, department or agency, but in that event, the same may be prosecuted or defended by the head of the office, department or agency to which such functions, powers and duties have been assigned or transferred by or under this Charter.

Section 306. Effective Date of Charter. This Charter shall take effect upon its approval by the Legislature.

Article IV. Powers of City

Section 400. Powers of City. The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution of the State of California.

The enumeration in this Charter of any particular power shall not be held to be exclusive of, or any limitation upon, this general grant of power.

Section 401. Procedures. The City shall have the power and may act pursuant to procedure established by any law of the State, unless a different procedure is established by ordinance.

California Constitution, Article XI, Section 6.

Municipal corporations to be formed under general laws. Corporations for municipal purposes shall not be created by special laws; but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed; and the legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns so incorporated, whenever a majority of the electors of any such city or town voting at a general or special election shall so determine. Cities and towns heretofore organized or incorporated may become organized under the general laws passed for that purpose, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith. Cities and towns hereafter organized under charters framed and adopted by authority of this Constitution are hereby empowered, and cities and towns heretofore organized by authority of this Constitution may amend their charters in the manner authorized by this Constitution so as to become likewise empowered hereunder, to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws. Cities and towns heretofore or hereafter organized by authority of this Constitution may, by charter provision or amendment, provide for the performance by county officers of certain of their municipal functions, whenever the discharge of such municipal functions by county officers is authorized by general laws or by the provisions of a county charter framed and adopted by authority of this Constitution. [Amendment adopted November 3, 1914.]

Statutes of 1909, page 677 (Deering's General Laws, Volume 2, Act 5192) the following portions thereof:

Act 5192. Construction and Maintenance of Sewers, Water-mains and Other Conduits. [Stats. 1909, p. 677; Amended by Stats. 1911, p. 300; Stats. 1915, p. 93. Stats. 1919, p. 153; Stats. 1923, p. 286.]

§ 1. One city may construct sewers, etc., for another. Any municipal corporation or sanitary district, under such terms and conditions as may be prescribed by the city council, or other legislative body thereof, is hereby authorized and empowered to permit any other municipal corporation or sanitary district to construct and maintain sewers, water-mains or other conduits in, across, or along the streets and other public places of such municipal corporation or sanitary district, and use the same for such purposes, under the provisions of this act, and not otherwise. [Amended by Stats. 1911, p. 300.]

§ 2. Resolution to construct. Whenever the city council, a sanitary board or other legislative body of any municipal corporation or sanitary district shall find, and by resolution shall declare, that the location of such municipal corporation or sanitary district, or any portion of the territory included therein, is such that the same cannot be adequately or conveniently provided with sewers, water-mains or other conduits, without the construction and maintenance by such municipal corporation or sanitary district of certain sewers, water-mains, or other conduits connecting therewith, in, across, or along certain streets, or other public places of any other municipal corporation or corporations, or sanitary district or districts, such city council, sanitary board or other legislative body, may cause a copy of such resolution to be submitted to the council, sanitary board or other legislative body of such other municipal corporation or corporations or sanitary district or districts, in which such streets or other public places are situated. Said resolution shall contain a description

of the sewers, water-mains, or other conduits proposed to be constructed and maintained in such other municipal corporation or corporations or sanitary district or districts, and shall designate the streets, or other public places thereof, in, across or along which such sewers, water-mains or other conduits are so proposed to be constructed and maintained. Said resolution shall be accompanied by a request in writing, that the municipal corporation or sanitary district, on behalf of which the same is made, signed by the clerk thereof, be granted permission to construct and maintain the sewers, water-mains or other conduits described in said resolution.

Granting permission to construct by city council. The city council, sanitary board or other legislative body of any municipal corporation or sanitary district receiving such request and a copy of such resolution may by ordinance (or by resolution in case of a sanitary district) grant such permission at its discretion, and under such terms and conditions as it shall therein prescribe.

Conditions of permission. If the permission granted under the provisions of this section shall be for the construction and maintenance of sewers, the city council, sanitary board or other legislative body by any municipal corporation or sanitary district granting the same, may, as a condition to the exercising of such permission, require that said municipal corporation or sanitary district shall have the right to connect its sewers with the sewers to be constructed under such permission, and to use the same in connection with its sewer system, upon the payment by it of such proportionate part of the cost of construction and maintenance of such sewers to the municipal corporation or sanitary district by which the same shall be constructed, as may be determined by resolutions of the city councils, sanitary boards, or other legislative bodies, or both municipal corporations or sanitary districts; such payment to be made at such times and in such amounts

as may be so determined. [Amended by Stats. 1911, p. 301.]

§ 4. Joint construction and maintenance of sewers, etc.: Other public corporations may join: Use of streets authorized. Whenever the city councils, sanitary boards or other legislative bodies of two or more municipal corporations, two or more sanitary districts, or one or more municipal corporations, and one or more sanitary districts, shall by resolutions adopted by them determine and declare that it will be for the interest or advantage of such municipal corporations or sanitary districts to do so, such municipal corporations or sanitary districts, by their respective councils, sanitary boards, or other legislative bodies, may enter into a joint agreement authorizing and providing for the joint construction and maintenance of sewers, water-mains, or other conduits situated in the streets or other public places of either or any of such municipal corporations or sanitary districts, including the joint construction and maintenance of all necessary outfall sewers, whether constructed within or outside of the exterior boundaries of such municipal corporations or sanitary districts, and by such joint agreement shall provide for the joint payment of the cost and expense of and for the joint use, benefit and maintenance of all such sewers, outfall sewers, water-mains and other conduits, upon such terms and conditions, and under such regulations, as may be approved by the city councils, sanitary boards, or other legislative bodies of all such municipal corporations or sanitary districts; and the city council, sanitary board or other legislative body of each such municipal corporation or sanitary district may, and are hereby vested with power to, bind and obligate such municipal corporations or sanitary districts to pay such proportionate part of the cost of the construction of such sewer, outfall sewer, water-mains, or other conduits, at such times and in such installments as may be provided for in such joint agreement;
* * *

* * * * * * * * *

Contract for construction: Joint use. All contracts for the construction of sewers, outfall sewers, water-mains, or other conduits, under the provisions of this section shall be made and entered into by one of such municipal corporations or sanitary districts designated by the city councils, sanitary boards or other legislative bodies of all such municipal corporations or sanitary districts, and in the manner provided in section three of this act. Two or more municipal corporations, two or more sanitary districts, or one or more municipal corporations, and one or more sanitary districts, may also, by their city councils, sanitary boards, or other legislative bodies, enter into an agreement or agreements with each other for the joint use of such municipal corporations or sanitary districts, of any sewers, outfall sewers, water-mains or other conduits theretofore constructed in whole or in part in the streets or other public places of either or any such municipal corporations or sanitary districts, upon such terms and conditions as they by mutual agreement may, by their respective city councils, sanitary boards or other legislative bodies, determine to be proper.

Use of streets authorized. Authority is hereby specifically granted to use the streets within the public corporations entering into such an agreement, for the construction and maintenance of sewers provided for by this section, and whenever it is necessary to extend such sewers without the limits of the public corporations entering into such joint or mutual agreement, then authority is hereby granted to use public highways without the limits of an incorporated city for the construction and maintenance of such sewers, subject only to the right of the board of supervisors to make reasonable police regulations for the protection of the highways so used. [Amended by Stats. 1911, p. 302; Stats. 1915, p. 93; Stats. 1919, p. 153; Stats. 1923, p. 286.]

Statutes of 1939, Chapter 24 (Deering's General Laws, Volume 2, Act 5192a) the following portions thereof:

Act 5192a. Municipal Sewer District Act of 1939. [Stats. 1939, ch. 24; Effective Feb. 2, 1939.]

§ 1. Designation of act. This act may be cited and shall be known as the "Municipal Sewer District Act of 1939."

§ 4. Formation of district to pay for works already constructed: Validation of contracts. * * * All contracts made prior to the adoption and passage of this act between any two or more municipal corporations, or between any municipal corporation and any county or sanitary district, providing for the joint construction, use or operation of sewer systems, or sewage disposal systems, are hereby ratified and confirmed, and it is hereby declared to be the intention of the Legislature that a district may be created to pay or repay the whole or any portion of the cost of such improvement in accordance with this act whether such payment has heretofore been made by said municipality, or has been agreed to be paid by it provided only that the district to be taxed or assessed is specially benefited by said improvement.

§ 16. Limitations of actions to invalidate contracts, etc. No action, suit or proceeding to set aside, cancel or question the validity of any contract pertaining to sewers and sewage disposal made between municipalities of this State, or between any municipality and county or sanitary district, or to declare any proceedings taken under this act void for any reason, shall be commenced or maintained unless the same be commenced within three months from the effective date of this act, or within three months from the date of said contract or the date of the proceeding claimed to be void was taken, whichever is later.

§ 17. Constitutionality of act. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act, and the Legislature hereby declares that it would have adopted this act, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases of this act may be declared unconstitutional.

§ 19. Need for urgency. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety within the meaning of section 1, Article IV, of the Constitution of the State of California, and shall take effect immediately.

The facts constituting the emergency are as follows:

Certain cities in this State are so situated that the cost of constructing outfall sewers for the disposal of sewage would be prohibitive, and other adjacent cities have already constructed outfall sewers which can be used, and such cities desire to obtain rights to cross the territory of the cities so unable to construct such outfall sewers, and contracts have been made or are contemplated between such cities and counties and sanitary districts. The disposal of sewage is of vital necessity to the inhabitants of any district in question and no delay in the acquisition or rights should be allowed or permitted. No act now adopted adequately provides for the creation of districts to acquire rights in other sewer systems and outside the boundaries of the districts, and this act is designed and intended to clear up and settle questions pertaining to the powers of municipalities to contract for such rights and to impose the burdens upon territory specially benefited.

Statutes of 1921, page 542 (Deering's General Laws, Volume 1, Act 1801) the following portions thereof:

Act 1801. Joint Exercise of Powers. [Stats. 1921, p. 542; Amended by Stats. 1941, ch. 465, p. 1765; Stats. 1943, ch. 750.]

An act providing for the joint exercise of powers by public agencies. [Amended by Stats. 1943, ch. 750, § 1.]

§ 1. Joint exercise of powers by public agencies: Definition.

§ 2. Agreements.

§ 3. Funds.

§ 4. Term.

§ 5. Disposition of property and surplus.

§ 1. Joint exercise of powers by public agencies: Definition. Two or more public agencies as herein defined, by agreement entered into respectively by them, and authorized by their legislative bodies, may jointly exercise any power or powers common to the several contracting parties.

The terms "public agency" shall include the Federal Government or any department or agency thereof, the State or any department or agency thereof, a county, city and county, city, public corporation, municipal corporation or public district. [Amended by Stats. 1941, ch. 465, p. 1765, § 1; Stats. 1943, ch. 750, § 2.]

§ 2. Agreements. Such agreements shall state the purpose of the agreement or the power to be exercised and provided for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised.

§ 3. Funds. The parties to such agreement may provide that contributions from the treasuries may be made for the purpose for which the agreement was entered into

or payments of public funds shall be made to defray the cost thereof which funds may be made to and disbursed by such agency as may be agreed upon; provided, however, that the method of disbursement shall agree as far as the same is practicable with the method provided by law for the disbursement by the parties to such agreement. Strict accountability of all funds and report of all receipts and disbursements shall be provided for.

§ 4. Term. Such agreements may be continued for a definite term or until rescinded or terminated and may provide for the method by which the same may be rescinded or terminated by any of the parties thereto.

§ 5. Disposition of property and surplus. Such agreement shall provide for the disposition, division or distribution of any property acquired as the result of such joint exercise of powers, and the return of any surplus moneys on hand after the purpose thereof shall be completed in proportion to the contributions made.

Statutes of 1935, Chapter 649, page 1797, the following portions thereof:

SECTION 1. Sections 2 and 3 of an act entitled "An act for the preservation of the public health of the people of the State of California and empowering the State Board of Health to enforce its provisions, and providing penalties for the violation thereof," approved March 23, 1907, amended April 1, 1911, and June 13, 1913, and May 24, 1917, are hereby amended to read as follows:

Sec. 2. It shall be unlawful to discharge, drain or deposit, or cause or suffer to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells, or into subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes, or to maintain a sewer well or sewer farm or to erect, construct, excavate, or maintain, or cause to be erected, constructed, excavated or maintained, any privy, vault, cesspool, sewage treatment works, sewer pipes or conduits, or other pipes or conduits, for the treatment and discharge of sewage or sewage effluents or impure waters, gas, vapors, oils, acids, tar, or any matter or substance offensive, injurious or dangerous to health, whereby the same shall overflow lands or shall empty, flow, seep, drain condense into or otherwise pollute or affect any waters intended for human or animal consumption or for domestic purposes, or any of the salt waters within the jurisdiction of this State; or to add to, modify or alter any of the plant, works, system thereof or manner or place of discharge or disposal; or to erect or main-

tain any permanent or temporary house, camp, or tent, so near to such springs, streams, rivers, lakes, tributaries, or other sources of water supply, as to cause or suffer the drainage, seepage, or flow of impure waters, or any other liquids, or the discharge or deposit therefrom of any animal, mineral, or vegetable matter, to pollute such waters without a permit from the State Board of Health, as hereinafter provided.

Sec. 3. * * *

Any county, city and county, city, town, village, district, community, institution, person, firm or corporation, who shall deposit, discharge or continue to deposit or discharge, into any stream, river, lake or tributary thereof, or into subterranean or any other waters, used or intended to be used for human or animal consumption or for domestic purposes, or into any sewer well or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary or other waters, or into any of the salt waters, or lands, within the jurisdiction of this State, any sewage, sewage effluent or other substance by the terms of section 2 of this act forbidden to be so deposited or discharged, without having an unrevoked permit so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction at the suit of any person or municipal corporation whose supply of water for human or animal consumption or for domestic purposes is or may be affected, or by the State Board of Health.

Anything done, maintained, or suffered, in violation of any of the provisions of section 2 or section 3 of this act shall be deemed to be a public nuisance, dangerous to health, and may be summarily abated as such.

Health and Safety Code—the following portions thereof:

§ 5410. "Sewage" explained. "Sewage," as used in this article, includes all of the following:

(a) Sewage, garbage, feculent matter, offal, refuse, and filth.

(b) Any animal, mineral, or vegetable matter or substance, offensive, injurious, or dangerous to health. [Enacted 1939.]

§ 5412. Acts forbidden without permit: Discharge of Sewage into water supply. No person shall, without a permit, discharge sewage into any springs, streams, rivers, lakes, tributaries thereof, wells, or subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes. [Enacted 1939.]

§ 5413. Same: Maintenance of sewer well, etc. No person shall maintain a sewer well or a sewer farm without a permit. [Enacted 1939.]

§ 5414. Same: Construction of privy, etc. No person, without a permit, shall construct, excavate, or maintain, any privy, vault, cesspool, sewage treatment works, sewer pipes or conduits, or other pipes or conduits, for the treatment and discharge of sewage or impure waters, gas, vapors, oils, acids, tar, or any matter or substance offensive, injurious, or dangerous to health, whereby they shall do any of the following:

(a) Overflow lands.

(b) Empty, flow, seep, drain, condense into or otherwise pollute or affect any waters intended for human or animal consumption or for domestic purposes, or any of the salt waters within the jurisdiction of this State. [Enacted 1939.]

§ 5417. Same: Discharge of sewage into water supply, etc. No person, without a permit, shall deposit or discharge into any stream, river, lake, or tributary thereof, or into any subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary, or subterranean or other waters, any sewage, or other substance regulated by this article. [Enacted 1939.]

§ 5418. Same. Discharge of sewage into State's salt waters. No person, without a permit, shall deposit or discharge any sewage, trade wastes, or any animal, mineral, or vegetable matter or substance, offensive, injurious, or dangerous to health in any of the salt waters within the jurisdiction of this State. [Enacted 1939.]

§ 5421. Petition for permit. Any person desiring to secure the permit mentioned in this article may file a petition with the State Department. [Enacted 1939.]

§ 5422. Contents of petition: Plan, etc. The petition shall contain a complete and detailed plan, description, and history of the existing or proposed works, system, treatment plant, and of any proposed addition to, modification or alteration of any of the plant, works, or system for, or manner or place of, discharge or disposal of sewage. [Enacted 1939.]

§ 5428. Findings requisite to issuance of permit. The permit shall be issued if the State department after investigation and hearing finds that all of the following are true:

(a) The substance being or to be discharged or deposited, is not such that under all the circumstances and conditions it will so contaminate or pollute any stream, river, lake, tributary, or other waters, as to endanger the

lives or health of human beings or animals, or constitute a nuisance.

(b) Under all the circumstances and conditions it is necessary so to dispose of the substance.

(c) The petitioner has complied with all orders of the State department issued under this article. [Enacted 1939.]

§ 5443. Violations of article enjoinable. Violation of this article may be enjoined by any court of competent jurisdiction at the suit of any person whose supply of water for human or animal consumption or for domestic purposes is or may be affected, or by the State department. [Enacted 1939.]

§ 5444. Unlawful works subject to abatement. Anything done, maintained, or suffered, in violation of any of the provisions of this article is a public nuisance, dangerous to health, and may be summarily abated as such. [Enacted 1939.]

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

CASES

STATUTES

IN THE

Supreme Court of the United States

October Term, 1948.
No. 205

CITY OF CULVER CITY, *et al.*,
Petitioners and Appellants Below,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent and Appellee Below.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent opposes the granting of a Writ of Certiorari herein upon the ground that no federal question is involved. The contentions made and the replies thereto are similar to those in the companion case of *City of Vernon v. The People of the State of California*, No. 204. However, because the material has been presented in a different manner in the petitions it was deemed advisable by the respondent to file separate briefs. As to items 1, 3, 4 and 5, the arguments in the briefs of the respondent are identical. Item 2 is essentially the same.

Petitioners' Claim of Jurisdiction.

The petitioners claim jurisdiction under 28 U. S. C. 344(b). The petitioners assert that their property and property rights have been taken without due process of law in violation of the Fourteenth Amendment; that the state court's judgment is based upon non-federal grounds which are untenable in the face of federal grounds; that the City of Culver City is now a chartered city, thereby entitling petitioners to the protection of the due process clause covering property or property rights acquired or used by it in connection with "municipal affairs" under the "home rule doctrine"; that contracts between cities are entitled to the protection of the due process clause against state action; and that the judgment of the state court involved a matter instrinsically important to all municipalities operating under the "home rule doctrine."

The situation with respect to the petition of Culver City is similar to that presented by the City of Vernon except that the City of Culver City, by virtue of becoming a chartered city while this matter was pending on appeal, contends that it has avoided the rule announced in *Trenton v. New Jersey*, 262 U. S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A. L. R. 1471.

The petitioners in the statement of the case (Pet. Br. pp. 27-29) define the issues raised by them, and concede that if they cannot avoid the decision of *Trenton v. New Jersey, supra,* the petition should be denied. It is conceded by the petitioners that the abatement of a nuisance and the construction of state statutes are state matters, decisions on which are binding upon this court, except in so far as they violate the provisions of the Federal Constitution; and that nothing contained in the peti-

tioners' charter renders the petitioners immune from supervision and regulation by the state. The petitioners do not contend that any law has been passed by the legislature of California impairing its contract or taking its property without due process of law; but contend simply that the judgment of the court by its terms has the effect of taking property and property rights in violation of the due process clause.

Under a decree the petitioners and numerous other cities, including the City of Los Angeles, and their respective officers, were required to abate a nuisance caused by the discharge of sewage into Santa Monica Bay. Under California law cities were permitted to make contracts with other cities and governmental instrumentalities to carry out their functions. Pursuant to these laws contracts were entered into for the discharge of sewage of the various cities through a trunk line, "treatment" plant and submarine tube in Santa Monica Bay.

It is only under the authority of these various laws relating to the joint powers of cities that the petitioners and other cities are authorized to make such contracts. One city may act on behalf of all others. (*City of Oakland v. Williams*, 15 Cal. 2d 542, 103 P. 2d 168.) The petitioners have asserted that they are exempt from all liability for the creation of the nuisance by reason of their contracts with the City of Los Angeles. The District Court of Appeal stated:

> "This is a proceeding initiated by the people of the State of California on behalf of the state itself, and on behalf of the State Department of Public Health, as well as other state agencies, against all named defendants, to abate a public nuisance. Therefore, the

court rightfully refrained from passing upon any of the rights, obligations or liabilities affecting the various defendants by reason of their contractual relations with each other, and left those matters open for future adjudication in a proper proceeding. Although the aforesaid contracts concerned the disposal of sewage, the court would not be justified in this action to adjudicate the rights existing between the various appellants by reason of their contracts one with the other. In so far as the judgment herein is concerned, if any of the appellants have any rights against the city of Los Angeles, or *vice versa*, by reason of any existing contract, such rights have been preserved and may be enforced in a proper action. All of appellants' property and rights were preserved to them and the judgment in the instant action does not impair or violate any of their constitutional rights."

Thus it will be seen that the petitioners have not been deprived of any right, privilege or immunity whatever, whether claimed under the due process clause or otherwise, but on the contrary all the rights, privileges, immunities as well as obligations of all parties to the various contracts, including the City of Los Angeles, have been preserved, and have not been affected in any way whatever.

Questions Involved.

The respondent disagrees with the first and third statements of the questions involved. Respondent does not believe the second question germane to this proceeding. The first and third statements are restated as follows:

(1) Where a state court has ordered the abatement of a nuisance and has offered a privilege to one defendant to join with others in the building of suitable treatment works and facilities which will abate the nuisance, may such defendant be heard to complain where it has applied for and secured a permit from the State Board of Public Health to join in those facilities being constructed?

(3) Where a state law authorizes municipalities to contract together to operate a joint enterprise, and where one may act on behalf of all in carrying out such joint enterprise, and where the state has sued (first) for the common law abatement of a nuisance caused by such enterprise, being for sewage disposal, and (second) for the enforcement of state laws relating to sewage disposal, may a city complain that its property is taken without due process of law where the state courts hold that such contracts are not a defense to the maintenance of a nuisance and failure to comply with the statutes, but hold that if there are any rights, obligations, liabilities or privileges by reason of such contracts between the cities themselves that such rights may be litigated in independent proceedings between the respective contracting parties?

ARGUMENT.

Summary of Argument.

1. No federal question can be raised under the due process clause for there has been no actual impairment of right or property.

2. A chartered city cannot urge that a state has violated the due process clause.

3. When parties have been fully heard in the regular course of judicial proceedings, the alleged deprivation of property by judicial decision does not ordinarily raise a federal question.

4. No federal question is involved when the judgment of the state court rests on adequate and independent state grounds.

5. A city cannot escape a primary liability by making a contract.

6. The City of Culver City has applied for and secured a permit to sewer through the new plant.

I.

No Federal Question Can Be Raised Under the Due Process Clause for There Has Been No Actual Impairment of Right or Property.

It is the contention of the petitioners that the State of California by a judicial decision has deprived the petitioners of property without due process of law. The holding of the court has been set out hereinabove. It has been previously held by this court that if the action of the state court did not affect the right or property, but left it as it was before the litigation, the judgment did not deprive the appellant of any right, privilege or immunities secured by the Constitution or laws of the United States.

Abbott v. Tacoma Bank of Commerce (1899), 175 U. S. 409, 20 S. Ct. 153, 44 L. Ed. 217.

II.

A Chartered City Cannot Urge That a State Has Violated the Due Process Clause.

It is established in this court that a municipal subdivision of the state is not a "person" within the protection of the due process clause, and that a municipality cannot urge that the laws of the state violate the due process clause. (*Twin Falls County, State of Idaho, v. Hendrickson* (1939), 305 U. S. 568, 59 S. Ct. 149, 83 L. Ed. 358; *Trenton v. New Jersey* (1923), 262 U. S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A. L. R. 1471.)

In the latter case this court pointed out that in this respect there was no distinction between governmental and proprietary rights.

This court has held that there is no distinction between a chartered city and unchartered city in respect to the contract clause and the due process clause of the Constitution. (*Hunter v. City of Pittsburgh* (1907), 207 U. S. 161, 28 S. Ct. Rep. 40, 52 L. Ed. 151.)

It may be contended that a city chartered pursuant to a state constitution, as in California, has greater rights in this respect than a city chartered by a general legislative act. That such a contention is not tenable is shown by this court in *Railroad Commission of California v. Los Angeles Railway Corporation,* 280 U. S. 145, 50 S. Ct. 71, 74 L. Ed. 234. In the latter case this court held that this court is bound by the decisions of the highest courts of the state as to the powers of their municipalities. It will be pointed out in this brief that the contracts in question were made and could have been made only by virtue of the several acts of the legislature relating to joint powers of cities. The making of such contracts was a matter within the domain and regulation of the general laws of the state, and was not "a municipal affair." Thus, the Supreme Court of California in *Allied Amusement Company v. Bryam* (1927), 201 Cal. 316, 320, 256 Pac. 1097, held:

> "When a general law of the state provides, as the act in question does, for a scheme of public improvement, the scope of which both intrudes upon and transcends the boundary of one or several municipalities, such contemplated improvement ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state."

Thus it will be seen that these contracts do not relate to municipal affairs, but relate to matters of state concern. The only power that the cities of California have to make contracts of this type is by virtue of the several joint powers acts. Therefore, as far as this proceeding is concerned, there is no distinction whatever between a chartered city and an unchartered city, for the only authority a city has operating outside its own boundaries is by virtue of the act of the Legislature of California. The petitioners have cited California cases relating to sewer and street work in a municipality to the effect that the construction of sewers is a "municipal affair." There is no dispute that the actual construction work of a sewer within the city limits is a municipal affair. In the matter of making and letting contracts and in the matter of payment of employees, the regulation of employees, etc., this is a municipal affair, but the California court holds, as previously pointed out, that when two or more cities contract pursuant to California law the matter ceases to be a municipal affair and becomes a matter of state concern. It is submitted that the issuance of a charter to the City of Culver City is not material to this proceeding.

III.

When Parties Have Been Fully Heard in the Regular Course of Judicial Proceedings, the Alleged Deprivation of Property by Judicial Decision Does Not Ordinarily Raise a Federal Question.

This court has accepted jurisdiction in numerous cases involving the due process clause based upon action of a state through its court or judicial officers. Such cases involve extraordinary situations such as irregularity in judicial proceedings. The usual rule is that alleged impairment of any right without due process of law by judicial decision does not raise a federal question.

Cross Lake Shooting & Fishing Club v. Louisiana (1912), 224 U. S. 632, 32 S. Ct. 577, 579-580, 56 L. Ed. 924;

Kryger v. Wilson (1916), 242 U. S. 171, 37 S. Ct. 34, 61 L. Ed. 229.

The Constitution does not guarantee that decisions of the state court shall be free from error, or require that their pronouncement shall be consistent.

Worcester County Trust Co. v. Riley (1937), 302 U. S. 292, 58 S. Ct. 185, 82 L. Ed. 268.

When parties have been fully heard in the regular course of judicial proceedings, an alleged erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution.

Central Land Co. v. Laitley (1895), 195 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91.

It is not conceded that there is any error in the decision of the state court.

IV.

No Federal Question Is Involved When the Judgment of the State Court Rests on Adequate and Independent State Grounds.

It has been pointed out that there was no actual impairment of right or property by the decision of the state court. The decision of the state court was not based on any federal question at all, but on the contrary was based on adequate and independent state grounds. The decision of the state court was based upon two grounds: First, upon the specific statutory provisions of the state law relating to the discharge and treatment of sewage, and second, upon the abatement of a public nuisance. No federal question was passed upon nor had to be passed upon to decide the case. It has been repeatedly determined that to give this court jurisdiction it must appear affirmatively, not only that the federal question was presented for decision, but also that its decision was necessary to a determination of the cause, and that it was actually decided, or that judgment could not have been given without deciding it.

Wilson v. Cook, 327 U. S. 474, 480, 66 S. Ct. 663, 90 L. Ed. 793.

V.

A City Cannot Escape a Primary Liability by Making a Contract.

The principal contention of the petitioners is that they should have been held to have escaped liability for the discharge of their sewage by reason of their contracts with the City of Los Angeles. The City of Los Angeles, they maintain, was obligated at its own cost and expense to provide the necessary work for sewage disposal and to maintain such work in proper condition. The petitioners further contend that when those disposal works were out of repair, were worn out, and had become inadequate, the responsibility was solely that of the City of Los Angeles. The screening plant (sometimes called a treatment plant), and submarine tube was adequate for the population it served only for a few years after it was constructed and placed in operation in 1925. This system now serves approximately three times that number of people, but the screening plant has not been enlarged. If the responsibility were solely that of the City of Los Angeles, as the petitioners contend, then the Superior Court and the District Court of Appeal erred in holding the petitioners and other cities jointly responsible for the creation of a public nuisance in the operation of the present sewage disposal system. The record, however, shows that the petitioners and all other cities were jointly engaged in a common enterprise. The fact that the screening plant and submarine tube were under the sole control of the City of Los Angeles is not relevant to the issue. It has been established in *City of Oakland v. Williams,* 15 Cal. 2d 542, 103 P. 2d 168, that cities conducting joint enterprises under the joint powers act may provide that the employees of one

of them shall serve for all and that normal governmental processes of the city so selected shall prevail for the management of the enterprise. The petitioners have justified the legality of their contracts with the City of Los Angeles. Indeed, such contracts were valid only by virtue of these statutes. (Stat. of 1909, p. 67; Deering's Gen. Laws, Act 5992; Joint Powers Act, Stat. of 1921, p. 542; Deering's Gen. Laws, Act 1801.)*

Whatever powers the City of Vernon and the City of Culver City would have within their boundaries, they have no general authority to act outside their limits in the absence of the statute.

Since the only law which would permit the disposition of sewage by Los Angeles in conjunction with other agencies was the Joint Powers Act, the court was justified in deciding that the parties were engaged in a joint enterprise, and hence are jointly liable for its result.

It therefore follows that the City of Vernon and the City of Culver City and the other cities which were joined as defendants in this proceeding were engaged as a matter of law as well as a matter of fact in a joint enterprise and are therefore jointly liable. The cases of *Carmichael v. City of Texarkana,* and other similar cases, under such circumstances do not support the contention made by the petitioners.

The City of Texarkana owed a duty to its inhabitants; but the City of Los Angeles owed no duty to the City of Vernon nor the City of Culver City to dispose of such cities' sewage.

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*Pertinent portions of these statutes are printed in the Supplement to the petition in case No. 205, pages 41-48.

VI.

The City of Culver City Has Applied for and Secured a Permit to Sewer Through the New Plant.

The petitioners contend that the decision of the District Court of Appeal is based upon untenable non-federal grounds in that it requires the petitioners to adopt one of two alternate methods of abatement. The first method would require the City of Culver City to contribute its share of the cost of the plant now being constructed. The City complains that it has no other feasible means for disposal of sewage. This finding of the trial court was based upon the evidence produced by the City that it had no plans for sewage disposal, had had no engineer, had not made any studies, did not have any plans whatever, and did not have the funds (except through a bond issue) to pay for sewer facilities. [Rec. pp. 145-146.] Although the petitioners complain bitterly concerning this portion of the decision, the City of Culver City has applied for and secured a permit from the State Board of Public Health to sewer through the new sewage treatment plant being built at Hyperion. [See: Opinion Dist. Ct. of App.; Rec. p. 312.] The petitioners assert (Pet. and Br. p. 46) that as to the portion of the decision having to do with the abatement of a nuisance under the court's power to enforce police regulations, the petitioners can of necessity offer no objection. In view of these facts the City should not be heard to object to the particular terms of the judgment it now contends is erroneous.

Conclusion.

We submit that no constitutional question is involved in this proceeding; that the rights of the petitioners in any contracts with the City of Los Angeles have been carefully preserved, not only as to the petitioners but also as to the City of Los Angeles; that a municipality, as an agent of the state, cannot, against the state, raise a question under the due process clause, and that no federal question of substance is shown in the petition for the writ.

The respondent respectfully requests that the writ be denied.

Respectfully submitted,

FRED N. HOWSER,
Attorney General,

WALTER L. BOWERS,
Assistant Attorney General,
Attorneys for Respondent.

BAYARD RHONE,
HENRY A. DIETZ,
Deputies Attorney General,
Of Counsel.